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6 THE STATES OF SOUTH CAROLINA
7 IN THE COURT OF APPEALS

RECEIVED
MAR 25 2019
SC Court of Appeals

8 CURTIS SHEPHERD

Case No.: 14-CP-38-0094

9 Plaintiff, – Appellant

APPEAL MOTION

10 vs.

11 WELLS FARGO BANK N.A. TRUST
12 COMPANY, as Trustee Failures to comply
13 with Pooling and Servicing Agreement as Bank
14 Custodian. Cut-Off Date: June 1, 2005
15 ROGERS TOWNSEND & THOMAS, PC
16 LENDER PROCESSING SERVICES, Inc.
17 (hereinafter "LPS") LPS DEFAULT
18 SOLUTIONS, Inc.Docx
19 MORTGAGE ELECTRONIC
20 REGISTRATION SYSTEMS, INC.,
21 AS NOMINEE FOR LENDER AND
22 LENDER'S SUCCESSORS AND
23 ASSIGNS, AND WELLS FARGO
24 BANK, N.A., AND PAMELA SIMMONS
25 BEASLEY. JASON T. MOSS
26 , AND William H. Sloan, AND John J. Hearn
27 Jason D. Wyman, Kevin T. Brown,
28 Cynthia Thomas

MOTION TO STAY AND DISMISS
BASED ON FRAUD ON THE
COURT

[PROPOSED] ORDER LODGED
HEREWITH

[No Hearing Required Pursuant to Local
Rule Section 22-3-10 Unless Court So
Orders]
Date (TO BE SET)
Time

Defendant– Respondent

MOTION TO STAY AND DISMISS BASED ON FRAUD ON THE COURT

NOTICE AND MOTION

THE STATES OF SOUTH CAROLINA

IN THE COURT OF APPEALS

MOTION TO STAY AND DISMISS BASED ON FRAUD ON THE COURT

Case No. 14-CP-38-0094

APPEAL FROM ORANGEBURG COUNTY

Court of Common Pleas

James B. Jackson Jr, Master-in-Equity's

Case No. 14-CP-38-0094

1. On APPEAL Orangeburg residents Connie Henderson and Curtis Shepherd (hereinafter "the Henderson Shepherd ") appeal a magistrate judge's Orders, Seeking Review of Magistrate Judge Decisions, Motion to Stay and Dismiss Based on Fraud on The Court, and for cause, says unto this Court:

2. Defendant- **Respondent, WELLS FARGO BANK N.A.** erroneously trying To Wrongful Foreclose on a CONNIE HENDERSON, **deceased and CURTIS SHEPHERD, then defendant- Respondent, WELLS FARGO BANK N.A .** Obtained a Lock out Order after the **STATE OF South Carolina COUNTY OF ORANGEBURG IN THE COURT OF COMMON PLEA, Civil Action #: CASE NO: 14-CP-38-0094** without doubt that defendant- **Respondent** who Performed the unlawful foreclosure of his property lacked standing to perform Such Foreclosure. Granted default judgment against one of the deceased couple, Causing the wrongful foreclosure and FINAL NOTICE TO VACTE WRIT OF OF ASSISTANCE (impending) lock out on date, 123 SNAPOVER POSTED April **MOTION TO STAY AND DISMISS BASED ON FRAUD ON THE COURT**

2, 2019 order by MAGISTRATE JUDGE JAMES B. JACKSON Jr.

A. THE UNITED STATES CONSTITUTION

3. Article III, § 1 of the United States Constitution: “The judicial Power of the United States, shall be vested in one Supreme Court, and in such inferior Courts as The Congress may from time to time ordain and establish. The Judges, both of the Supreme and inferior Courts, shall hold their Offices during good Behavior, and Shall, at stated Times, receive for their Services, a Compensation, which shall not Be diminished during their Continuance in Office.”

A. United States magistrate judges James B, Jackson Article I Judge

B. A four-justice plurality of the Supreme Court, with two other justices Joining in the judgment, 10 held that Congress, by conferring Article III Powers on an adjunct system of courts staffed by non-Article III judges, “Impermissibly removed most, if not all, of the essential attributes of the Judicial power” from the district courts upon which the bankruptcy Jurisdiction had been conferred. Therefore, Congress’s delegation of Authority to the bankruptcy courts was unconstitutional.

C. Magistrate Judges and Bankruptcy Judges (“ Article I Judge’s ”)

D. Pursuant to Local Civil Rule 22-3-10. The second section discusses objections to a magistrate judge’s proposed findings, recommendation or report on a dispositive motion, such as motions for injunctive relief or summary judgment, presented to the district judge pursuant to Local Civil Rule 22-3-10

4. SEE: A Ponzi scheme or fraudulent enterprise cannot be successful or even operate without the help of a number of individuals both inside and outside the company perpetuating the scheme. The facts will show that ROSE was part of a carefully orchestrated con-not a solo act.

CONSTITUTIONAL PROVISION INVOLVED

5. This case involves the Fourteenth Amendment
To the United States Constitution, this provides, in

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1 Relevant part, "No state shall ... deprive any person of
2 ... Property ... without due process of law"

3 **Rule 37.(e) Basis for Granting.**

- 4 6. Reconsideration will be granted on motion of their questing party,
5 only when it appears that the Court overlooked a material fact in the
6 record, a statute or a decision which is controlling as authority and
7 which would require a different judgment from that rendered, or has
8 erroneously construed or misapplied a provision of law or a
9 controlling authority.

10 7. in addition, any ruling that involves violation of due process of law under
11 The Fifth, Sixth, or Seventh Amendments is also a void judgment. Void judgment
12 Can be attacked or vacated at any time and there is no statute of limitation. See
13 Long v. Shore bank Development Corp., 182 F.3d 548 (C.A. 7 Ill. 1999). A void
14 Judgment is one which, from its inception, was a complete nullity and without
15 Legal effect, Lubben v. Selective Service System Local Bd. No. 27, 453 F.2d 645,
16 14 A.L.R.Fed. 298 (C.A. 1 Mass. 1972).

17
18 **8. SEE:WELLS FARGO BANK, N.A. v MARCHIONE**

19
20 9. Pursuant to Article III of the Constitution, Section 1, Section 2, 5th,
21 Amendment 7th, Amendment 14th, Amendment, of the United States Constitution,
22 as interpreted By the United States Supreme Court in Stern v. Marshall, 131 S. Ct.
23 2594 (2011).stated that Magistrate Judge and bankruptcy judges are Article I Judge
24 Court held that a bankruptcy court, as a non-Article III court (i.e. courts without
25 full judicial independence) lacked constitutional authority under Article III of the
26
27

28 **MOTION TO STAY AND DISMISS BASED ON FRAUD ON THE COURT**

1 United States Constitution to enter a final judgment on a state law counterclaim

2 10. Plaintiff, – Appellant request this appeal Court to see Magistrate Judge
3 Judge James B. Jackson Jr, **At Oath of office at 5 U.S.C. 3331, 28 U.S.C. 543.**
4

5 11.(a) Article III is “an inseparable element of the constitutional system of
6 checks and balances” that “both defines the power and protects the
7 independence of the Judicial Branch.” *Northern Pipeline*, 458 U. S., at 58
8 (plurality opinion). Article III protects liberty not only through its role in
9 implementing the separation of powers, but also by specifying the defining
10 characteristics of Article III judges to protect the integrity of judicial
11 decision making.

12 **Rule 5.4 Professional Independence of a Lawyer**

13 12.(b) A lawyer shall not form a partnership with a non-lawyer if any of the

14 13.Activities of the partnership consist of the practice of law. As alleged in
15 Further detail herein, all the Defendant– Respondent acted in Concert and
16 Conspired to unlawfully and secretly violate and avoid the Bankruptcy rules, the
17 Bankruptcy code, and the federal and the state common Law in their roles as
18 Attorneys and vendors to creditors to the detriment of Plaintiff. Each of the
19 Defendant– Respondent reached an agreement to illegally split attorneys’ Fees
20 (“Illegal Agreement”), acted in concert and conspired in furtherance of the Illegal
21 Agreement, enjoyed a significant benefit from the Illegal Agreement, which
22 Caused harm to the Defendant, and the Court. Each of the Plaintiffs was A
23 necessary party to the conspiracy.
24

25 14. Magistrate Judge James B. Jackson Jr never signed off on none his Court
26 Order’s from 2012 to 2019.
27

28 **MOTION TO STAY AND DISMISS BASED ON FRAUD ON THE COURT**

TAKE JUDICIAL NOTICE SEE:EXHIBIT A-M DESCRIPTION

15. Plaintiff ("Plaintiff" or "Plaintiff") is a resident of Orangeburg County, Orangeburg

MOTION TO STAY AND DISMISS BASED ON FRAUD ON THE COURT

1 16. Plaintiff is informed and believes and based thereon alleges that Defendant U.S.BANK
2 N.A. (hereinafter, "U.S. Bank" or the "Trustee"), is a national banking Association organized
3 Under the laws of the United States and is a wholly-owned Subsidiary of U.S.Bancorp. Plaintiff
4 Alleges that U.S. Bank is the named Trustee for the MASTR Asset Backed Securities Trust
5 2005-AB1 (the "Trust"). Plaintiff Is informed and believes and therefore alleges that U.S. Bank
6 Has acted as a trustee for mortgage-backed securitized trusts since 1987.
7

8 17. Plaintiff is informed and believes and based thereon alleges that the Trust is Common law
9 Trust formed in 2005 pursuant to New York law. The corpus of the Trust allegedly consists of a
10 Pool of residential mortgage notes allegedly secured by liens on residential real-estate. Plaintiff
11 Is informed and believes and therefore alleges that the Trust has no officers or directors and no
12 Continuing duties other Than to hold assets and to issue the series of certificates of
13 Investment. A detailed Description of the categories of mortgage loans is included in the
14 Prospectus ("the Prospectus") duly filed with the Securities and Exchange Commission on
15 or about November 1, 2005. The Trust's SEC CIK Code for all SEC filings is
16 0001343149. True and correct copies of pages 1 through 7 of the Prospectus are
17 Attached hereto as Exhibit "A" and incorporated herein by reference.
18

19 18. Plaintiff is informed and believes and based thereon alleges that Defendant
20 WELLS FARGO BANK, N.A, is a South Dakota corporation (hereinafter, "Wells
21 "Wells Fargo") with its principal place of business in California. Based upon information and
22 belief, Plaintiff alleges that Wells Fargo is the Master Servicer, Trust Administrator and a
23 Custodian of the Trust. Additionally, based upon information and belief, Wells Fargo was the
24 Originator of the mortgage loan in this case. The Pooling and Servicing Agreement ("PSA") for
25 the Trust is a public document on file with the SEC. The website for this
26
27

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Document:[http://www.sec.gov/Archives/edgar/data/1343149/000116231805001002/mabs2005ab1pooling agreement.htm](http://www.sec.gov/Archives/edgar/data/1343149/000116231805001002/mabs2005ab1pooling%20agreement.htm). Moreover, a true and correct copy of the PSA is attached hereto as Exhibit "B" and incorporated herein by reference.

19. Plaintiff alleges that one purpose of the PSA is to document that in the regular course of Business the Defendants originate and acquire mortgage loans and desire by the PSA to confirm The terms and conditions under which the Trust will "acquire the mortgage loans" so originated.

20. Plaintiff is informed and believes and based thereon alleges that WELLS FARGO HOME MORTGAGE is a division of Wells Fargo (hereinafter, "Home Mortgage"). Based upon Information and belief, Home Mortgage was formerly a separate corporate entity known as Wells Fargo Home Mortgage, Inc., but in or around May 2004, it merged with Wells Fargo and Became a division of Wells Fargo. Thus, Wells Fargo and Home Mortgage are one and the same And Wells Fargo is liable for any and all of Home Mortgage's conduct alleged Herein. Plaintiff hereinafter differentiates the two as Wells Fargo deceptively differentiated Between the two entities when dealing with Plaintiff.

21. Plaintiff is informed and believes and based thereon alleges that WELLS FARGO BANK, N.A. Trustee Services LLC ("WELLS FARGO BANK, N.A") is a Texas limited Liability Company in the business of conducting non-judicial foreclosures in South Carolina.

22. Plaintiff is informed and believes and based thereon alleges that First American Title Insurance Company ("First American Title") is a California corporation with its principal place Of business in California. First American Title is in the business of conducting non-judicial Foreclosures in South Carolina and/or assisting foreclosure trustees (hereinafter, "First American Loan star" and "First American Title" shall be collectively referred to as "First American."

23. Plaintiff CURTIS SHEPHERD is informed and believes and based thereon alleges

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1 That this Court to take judicial Notice of **WELLS FARGO BANK N.A. Order to Cease and**
2 **Desist** of the UNITED STATES OF AMERICA BEFORE THE BOARD OF GOVERNORS
3 OF THE FEDERAL RESERVE SYSTEM WASHINGTON DC. Docket Nos. 11-094-B-HC1 11-
4 094-I-HC1 11-094-B-HC2 11-094-I-HC2
5

6 24. WHEREAS, the Board conducted a targeted investigation of aspects of Financials
7 Consumer lending operations during the period January 1, 2004 to September 2008, primarily
8 Involving home mortgage lending in stores located in certain areas of Florida, New York,
9 Pennsylvania, Tennessee, Texas and New Mexico;
10

11 25. Plaintiff CURTIS SHEPHERD moves this Court to take judicial Notice of
12 WHEREAS, Wells Fargo transferred Financials lending operations to Wells Fargo's lead banking
13 Subsidiary, Wells Fargo Bank, N.A., Sioux Falls, South Dakota (the "Bank"), over a several
14 Month Period ending in September 2008 (the "Reorganization");
15

16 26. Plaintiff CURTIS SHEPHERD moves this Court to take judicial Notice of
17 WHEREAS, between the Reorganization and July 7, 2010, Financials lending operations were
18 Conducted by loan production offices ("LPOs") of the Bank, with the Bank funding the home
19 Mortgage loans originated by the LPOs;
20

21 27. Plaintiff CURTIS SHEPHERD moves this Court to take judicial Notice of
22 WHEREAS, on July 7, 2010, Wells Fargo announced that the Bank was closing nationwide the
23 LPOs formerly operated as financial stores;
24

25 28. Plaintiff CURTIS SHEPHERD moves this Court to take judicial Notice of
26 WHEREAS, insofar as the home mortgage loans that Financial originated and funded between
27 January 1, 2004, and the Reorganization remain outstanding, such loans remain assets of Financial
28

MOTION TO STAY AND DISMISS BASED ON FRAUD ON THE COURT

1 (Or otherwise remain subject to Financials control) (The "Legacy Assets"), with the Bank servicing
2 The Legacy Assets since the Reorganization;
3

4 29. Plaintiff CURTIS SHEPHERD moves this Court to take judicial Notice of
5 WHEREAS, although Financial ceased originating and funding home mortgage loans in connection
6 With the Reorganization, Financial or other entities of Wells Fargo may in the future engage in home
7 Mortgage lending operations;
8

9 30. MOTION is attached Hereto as Exhibit B.

10 31. The defendants herein named as "all persons unknown, claiming any legal or equitable
11 Right, title, estate, lien, or interest in the property described in the complaint adverse to
12 Plaintiff's Title or any cloud on plaintiff's title thereto" are hereinafter sometimes referred to as
13 The "Unknown defendants" and are unknown to Plaintiff. These unknown defendants and
14 Each of them claim or appear to claim some right, title, estate, lien, or interest in the property
15 Described in Paragraph 18 herein, adverse to Plaintiff's title. Their claims, and each of them,
16 Constitute a cloud on Plaintiff's title to the property
17

18 32. Plaintiff is ignorant of the true names and capacities of defendants sued herein as DOES
19 1 through 10, inclusive, and therefore sues these defendants by such fictitious names and all
20 Persons unknown claiming any legal or equitable right, title, estate, lien, or interest in
21 The property described in this complaint adverse to Plaintiff's title, or any cloud on Plaintiff's
22 Title thereto. Plaintiff will amend this complaint to allege their true names and capacities when
23 Ascertained.
24

25 33. Defendants sued herein as DOES 1 through 10 are contractually, strictly, negligently,
26 Intentionally, vicariously liable and or otherwise legally responsible in some manner for each
27

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1 And every act, omission, obligation, event or happening set forth in this Complaint and that each
2 Of Said fictitiously named Defendants is indebted to Plaintiff as hereinafter alleged
3

4 34. The use of the term "Defendants" in any of the allegations in this Complaint, unless
5 Specifically otherwise set forth, is intended to include and charge both jointly and severely, not
6 Only named Defendants, but all Defendants designated as well.
7

8 35. Plaintiff is informed and believe and thereon alleges that, at all times mentioned herein,
9 Defendants were agents, servants, employees, alter egos, superiors, successors in interest, joint
10 Ventures and/ or co-conspirators of each of their co-defendants and in doing the things herein
11 After mentioned, or acting within the course and scope of their authority of such agents, servants,
12 Employees, alter egos, superiors, successors in interest, joint ventures and/ or co-conspirators
13 With the permission and consent of their co-defendants and, consequently, each Defendant
14 Named herein, and those Defendants named herein as DOES 1 through 10, inclusive, are jointly
15 And severally liable to Plaintiff for the damages and harm sustained as a result of their wrongful
16 Conduct.
17

18 36. Defendants, and each of them, aided and abetted, encouraged, and rendered substantial
19 Assistance to the other Defendants in breaching their obligations to Plaintiff, as alleged
20 Herein. In taking action, as alleged herein, to aid and abet and substantially assist the
21 Commissions of these wrongful acts and other wrongdoings complained of, each of the
22 Defendants acted with an Awareness of its primary wrongdoing and realized that its conduct
23 Would substantially assist the Accomplishment of the wrongful conduct, wrongful goals, and
24 Wrongdoing.
25
26
27

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1
2 37. Defendants, and each of them, knowingly and willfully conspired, engaged in common
3 Enterprise, and engaged in a common course of conduct to accomplish the wrongs complained of
4 Herein. The purpose and effect of the conspiracy, common enterprise, and common course of
5 Conduct complained of was, inter alia, to financially benefit Defendants at the expense of
6 Plaintiff by engaging in fraudulent activities. Defendants accomplished their conspiracy,
7 Common enterprise and common course of conduct by misrepresenting and concealing material
8 Information regarding the servicing of loans, and by taking steps and making statements in
9 Furtherance of their wrongdoing as specified herein. Each Defendant was a direct, necessary and
10 Substantial participant in the conspiracy, common enterprise and common course of conduct
11 Complained of herein, and was aware of its overall contribution to and furtherance
12 Thereof. Defendants' wrongful acts include, inter alia, all of the acts that each of them are
13 Alleged to have committed in furtherance of the wrongful conduct of complained of herein.

14
15 38. Any applicable statutes of limitations have been tolled by the Defendants' continuing,
16 Knowing and active concealment of the facts alleged herein. Despite exercising reasonable
17 Diligence, Plaintiff could not have discovered, did not discover, and was prevented
18 From discovering, the wrongdoing complained of herein.
19
20

21 39. In the alternative, Defendants should be estopped from relying on any statutes
22 Of limitations. Defendants have been under a continuing duty to disclose the true character,
23 Nature and quality of their financial services and debt collection practices. Defendants owed
24 Plaintiff an affirmative duty of full and fair disclosure, but knowingly failed to honor and
25 Discharge such duty.
26

27 40. Based upon information and belief, Defendant LPS Default Solutions, Inc. is a Delaware
28

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1 Corporation with its principal place of business in Florida and doing business in the State of
2 South Carolina. LPS provides mortgage loan services to lenders including **WELLS FARGO**
3 **BANK N.A.** LPS and DOES 1 through 10 are collectively referred to herein as "LPS."

4 **Background of the Company**

5
6
7 41. As the economy slumped in 2008 and the foreclosure rate rose, Defendants utilized a
8 "fool-proof" business model to increase market share, drive revenues, and artificially inflate
9 LPS' stock price. This business model, which ultimately achieved the profits Defendants sought,
10 Was steeped in illicit practices. Under this business model, LPS offered default management
11 Services *free of charge* to clients – banks and mortgage servicers – many of whom already used
12 The Company's technology solutions. As further detailed below, these services included
13 Administrative and support services to assist in managing the foreclosure process. Banks and
14 Mortgage servicers who were flooded with foreclosures readily welcomed this hard-to-refuse
15 Offer.
16

17
18 42. pay illegal "referral fees" to LPS as certain legal work was accomplished in the cases
19 They were handling. Attorneys were conscripted into this network because LPS offered a steady
20 Flow of legal work and, as LPS was the nation's largest servicer, attorneys who were not part
21 Of the network would be at a competitive disadvantage in landing foreclosure cases. By
22 Financing its business model with attorneys' fees rather than by charging clients, LPS had a
23 Unique competitive advantage and was perfectly positioned to profit from the foreclosure Crisis.

24 **43.**needed to keep its network attorneys under its thumb and operating at its whim so that it
25 Could push through foreclosures as quickly as possible, earn more business from bank and
26 Servicer clients, expand its market share, charge more fees to attorneys, and increase the
27

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1 Company's profits. In order to do this, LPS required its attorneys to follow certain timeframes in
2 Managing cases and strongly discouraged them for communicating with clients. All
3 Communications went through LPS' Desktop system – the Company's work-flow processing
4 Web-based software application. In this way, LPS managed the flow of information between
5 Clients and network attorneys. LPS also tracked its network attorneys through an internal metric
6 Known as Attorney Performance Reviews ("APR"), which ranked attorneys based on how
7 Quickly they performed tasks on behalf of servicers. Network attorneys had to learn to operate
8 Successfully within the confines of the APR to continue to receive LPS referrals. While these
9 Limitations eviscerated the attorney-client relationship and the quality of the work performed, to
10 Be successful in the LPS network, network attorneys had to play by LPS' rules.

11
12
13
14 **44.** Due to hard economic times marked by record foreclosure rates, and as a result of its
15 Successful albeit improper business model, LPS had a tremendous volume of default work to
16 Process. The Company was determined to push this work through the Company's system as
17 Quickly as possible in order to drive market share and profits. To achieve this, LPS employed
18 Various illicit practices at its offices – which included its Jacksonville, Florida headquarters, its
19 LPS Default Solutions, Inc. subsidiary in Mendota Heights, Minnesota, and its document
20 Solutions subsidiary (DocX, LLC ("DocX")) in Alpharetta, Georgia – to churn as many files as
21 Quickly as possible.

22
23
24 **45.** These illicit practices were pervasive throughout the Company during the Class Period
25 And included the fabrication of documents, "robo-signing," the forging of documents, improper
26 Notarization, violation of security protocols, and the concealment of known mistakes from courts,

27
28 **MOTION TO STAY AND DISMISS BASED ON FRAUD ON THE COURT**

1 Attorneys and clients. For instance, through DocX, the Company engaged in the wholesale
2 Fabrication of mortgage assignments, which were filed with county clerk offices and used as
3 Evidence by LPS' clients in foreclosure proceedings to evict homeowners. Moreover, to increase
4 The speed at which it processed mortgage-related documents, LPS required its employees to
5 Engage in "robo-signing" and "surrogate signing." "Robo-signing" involved LPS employees
6 Signing mortgage related documents at record speeds *without verifying* their accuracy.
7 "Surrogate-signing" or forging, as it was internally known, involved LPS employees forging the
8 Names of various bank officials on these same mortgage documents. These problematic
9 Documents were then improperly notarized by LPS employees who wholly ignored notarization
10 Protocols by failing to verify the signatories' identities.

13 **46.** LPS' efforts to push through work as quickly as possible to drive market share and
14 Profits created a culture which valued speed over accuracy and encouraged the concealment of
15 Known mistakes. LPS employees were rewarded for their speed, and this resulted in the violation
16 Of security protocols and significant and pervasive errors in the default services that they were
17 Providing (*e.g.*, the application of mortgage payments to incorrect accounts). Even when these
18 Problems were discovered by the Company's internal auditors, LPS swept them under the rug.
19 Indeed, LPS knowingly concealed errors in files from clients, network attorneys, and courts to
20 Keep clients happy and to ensure that a finger could not be pointed at LPS.

23 47. Through these illicit practices, LPS' revenues rose significantly throughout the Class
24 Period. In particular, default management services revenue nearly doubled. While Defendants
25 Continuously touted these revenues and the market share the Company was gaining, they failed
26 To disclose to investors that its attorney-reliant model and illicit business practices drove these
27

28 **MOTION TO STAY AND DISMISS BASED ON FRAUD ON THE COURT**

1 Achievements. In such a way, Defendants artificially inflated LPS' stock price.

2
3 **48.** Eventually, the Company's illicit business scheme began to unravel. As detailed below,
4 Through a series of partial revelations beginning on April 16, 2009, the market began to learn the
5 Truth regarding the Company's improper business model and illicit business practices. Indeed,
6 Revelations on April 16, 2009, April 3, 2010, and October 1, 2010 through October 4, 2010,
7 Caused the stock price to plummet by approximately 13%, 4%, and 13%, respectively, on
8 Unusually heavy trading volume, resulting in millions of dollars in investor losses. At the same
9 Time that investors learned bits and pieces of information regarding the Company's true business
10 Practices, Defendants continued to mislead the market through false assurances and outright lies.
11 In such a way, Defendants prevented the market from learning the full truth and kept the
12 Company's stock price artificially inflated throughout the Class Period. Indeed, had the market
13 Been apprised of the full truth about Defendants' practices, the impact on LPS' stock price
14 Would have been far more dramatic.
15
16

17 **49.** Defendants' fraud has not gone unnoticed. The Company is currently the subject of
18 Inquiries by the Department of Justice, the U.S. Attorney General, and the Attorneys General of
19 Several states. LPS also recently signed a consent order with various federal regulatory bodies,
20 Which requires it to intensely review and remediate the Company's practices? In addition, the
21 Company is the subject of litigation throughout the country related to the practices described
22 Herein.
23
24

25 **50.** Defendants LPS was formed on July 2, 2008, as a spin-off from FNIS. At that time, it
26 Became an independent publicly traded Company. According to the Company, "LPS is the
27
28

MOTION TO STAY AND DISMISS BASED ON FRAUD ON THE COURT

1 Industry's number one provider of mortgage processing services, settlement services and
2 Default solutions, and the nation's leading provider of integrated data, servicing and
3 Technology solutions for mortgage lenders." See Lender Processing Services, Overview,
4 <http://phx.corporate-ir.net/phoenix.zhtml?c=222167&p=irol-overview> (last visited Apr. 27,
5 2011). Indeed, LPS handles more than 50% of residential mortgages by dollar volume in the
6 U.S. See LPS Information Statement, Exhibit 99.1 to Amendment No. 6 to Form 10-12B
7 Filed on June 19, 2008. The Company has 14 of the 15 biggest loan servicers as clients and
8 All of the nation's 50 largest banks use at least some of its services. 2 The Company is
9 Extremely profitable and achieved revenues of nearly \$2.4 billion in 2009 and \$2.5 billion in
10 2010.
11
12

13 51. The Company operates through two reporting segments: (1) Technology, Data and
14 Analytics; and (2) Loan Transaction Services. See LPS' Form 10-K for the period ending
15 December 31, 2009, filed on February 23, 2010. The Technology, Data, and
16

17
18 1 Internal citation are omitted, and emphasis is added, unless otherwise stated.

19 2 See Scot J. Paltrow, *Special Report: Legal woes mount for a foreclosure kingpin*,
20 REUTERS (Dec. 6, 2010), <http://www.reuters.com/assets/print?aid=USTRE6B547N20101206> (last visited Apr. 27, 2011) (hereinafter, "Reuters").

21 Analytics segment includes the Company's technology solutions, such as its mortgage
22 Servicing platform ("MSP") and its Desktop system. *Id.* MSP automates all areas of loan
23 Servicing, from loan setup and ongoing processing to customer service, accounting and
24 Reporting. *Id.* LPS' Desktop system is a web-based, "middleware enterprise workflow
25 Management application designed to streamline and automate business processes." *Id.* The
26 Desktop system has three components: process management, document management, and
27

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1 Invoice management, and is utilized primarily by many servicers to manage the default side
2 Of their businesses. The Company provides the hardware for these applications as well as
3 Personnel to help keep these systems running.
4

5 52. The Company's Loan Transaction Services segment includes its default management
6 Services and its loan facilitation services. *Id.* In particular, the Company's loan facilitation
7 Services consist of origination and real estate-related services, such as settlement
8 Services, title agency and closing services, traditional appraisals and appraisal management
9 Services. *Id.*
10

11 **LPS' Default Management Services**

12 53. LPS touts that its default management services allow its "customers to efficiently
13 Manage the business processes necessary to take a loan and the underlying real estate securing
14 The loan through the default and foreclosure process." *Id.* The Company states that it "offer[s] a
15 Full spectrum of services relating to the management of defaulted loans, from initial property
16 Inspection through the eventual disposition of our customer's asset." *Id.* These include
17 Foreclosure services, property preservation and inspection services, and asset management,
18 Default title and settlement services. *Id.* In particular, the Company represents that it
19 Provides its lender and servicing customers with services that facilitate Completing the
20 Foreclosure process, such as offering them certain administrative and support Services in
21 Connection with managing foreclosures, including posting and publication of Foreclosure and
22 Auction notices, conducting title searches, providing due diligence and Research services and
23 Various other title services in connection with the foreclosure process. *Id.*
24
25
26

27 **The LPS Business Model**

28 **MOTION TO STAY AND DISMISS BASED ON FRAUD ON THE COURT**

1 **1. LPS Drives Market Share by Offering Its Clients Free**
2 **Services**

3 54. As the economy slumped, LPS' default management services became the Company's
4 Key source of revenues. *See* Reuters at 2. Indeed, foreclosures have skyrocketed
5 Since 2006. In 2008, nearly 3.2 million foreclosure filings were made on more than
6 2.3 million U.S. properties, an increase of 225% since 2006 and an 81% increase since
7 2007.³ In 2009, over 3.9 million foreclosure filings were made on more than 2.8 million
8

9
10 ³ See RealtyTrac, 2008 Year-End Foreclosure Market Report, Feb. 5, 2009,
11 <http://www.realtytrac.com/home/> (last visited May 5, 2011).

12 Properties.⁴ and, at the end of October 2010, the number of properties heading into
13 Foreclosure was 7.4 times historical averages. Reuters at 2. As LPS' services are efficient;
14 Low-cost and speedy, LPS was perfectly positioned to profit from the foreclosure crisis.

15 55. Determined to increase market share during hard economic times, Defendants
16 Utilized a seemingly fool-proof business model. As detailed above, LPS' Desktop
17 Application is primarily used by customers for default management. Defendants took
18 Advantage of this ready customer base to market its default management services to these
19 Clients who already used its core technology. Defendants offered to provide these clients
20 Complete default management servicing. As Defendant CEO Carbineer explained:
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10 56. Critically, under LPS' business model, but unknown to the market, the Company offers
11 These default management services free to its clients – banks and mortgage servicers. As Bill
12 Newland ("Newland"), the Vice President of Operations of LPS Default
13

14
15 4. See RealtyTrac, Realty Track Year-End Report Shows Record 2.8 Million U.S.
16 Properties with Foreclosure Filings in 2009, Jan. 13, 2010, <http://www.realtytrac.com/home/>,
(Last visited May 5, 2011).

17 Solutions,⁵ who specifically handles the Company's attorney management area testified,
18 When LPS provides services to its clients – the mortgage servicers and banks that hire it to do
19 Foreclosure work – it does not charge them fees. Newland Dep. at 52:16-25; 53:1-6; 154:19-
20 25 and 155:1-17. Accordingly, for mortgage servicers and banks, receiving complete default
21 Management services for free during the foreclosure crisis was a "no brainer." In such a
22 Way, LPS was successful in signing up existing customers into these services and gained
23 Market share as bank clients turned to LPS to assist them in completing foreclosures faster
24 And in greater volumes.
25
26

27 **2. LPS Earns Revenues by Charging Referral Fees to**

28 **MOTION TO STAY AND DISMISS BASED ON FRAUD ON THE COURT**

Attorneys in its “Network” and through Illegal Fee-Splitting

57. In order to generate revenues from its business model, Defendants formed a “network” of Attorneys to help it service its clients’ foreclosure cases. Attorneys who became part of its Network would receive a steady flow of legal work from Defendants. As LPS was the nation’s Largest servicer, attorneys who did not sign up to be a part of this network would be at a Competitive disadvantage in landing foreclosure cases. For these reasons, many law firms were Conscripted into the LPS network.

5 Excerpts of the Deposition Transcript of Bill Newland dated June 16, 2009 (“Newland Dep.”), taken in *Wood v. Option One Mortg. Corp., Fid. Nat’l & Bankr. Solutions*, and attached to the Third Amended Complaint filed in *Thorne v. Prommis Solution Holding Corp.*, No. 09-11763 (Bankr. N.D. Miss. Sept. 30, 2010), are attached as **Exhibit A**. Newland, who testified on behalf of the Company in a 30(b)(6) deposition, has Primary oversight for the Company’s Jacksonville facility and manages the Company’s Attorney management area and special assets for its foreclosure department. Newland Dep. At 7:24-25 and 8:1-4.

58. Plaintiff CURTIS SHEPHERD moves this Court to take judicial Notice of In order to be a part of the LPS “network,” attorneys had to execute a “Network Agreement” With LPS. This agreement provided significant limitations and requirements on attorneys and Also set forth a fee arrangement between LPS and network attorneys. Indeed, although Defendants deliberately failed to inform the market in its statements (as well as courts and Borrowers in proceedings), LPS earns revenue by charging referral fees it calls “administrative Fees” to lawyers in its network for handing them foreclosure and bankruptcy files. Newland Testified that while clients do not pay for LPS’ services regarding a foreclosure (*Id.* at 143:8-12), Attorneys in the network pay an “administrative support fee” for having the loan come to them

MOTION TO STAY AND DISMISS BASED ON FRAUD ON THE COURT

1 Through the referral network of LPS Default Solutions. *Id.* at 143:13-17. According to Newland,
2 The fee is a set dollar amount determined by the Company's executives. *Id.* at 144:1-5.
3 Accordingly, the only compensation of any type that LPS Default Solutions receives is this
4 Administrative support fee *from attorneys*. *Id.* at 156:3-9. According to Newland, these fees
5 Fund all of LPS Default Solutions' activities, pay all of its overhead, and comprise all of its
6 Profits. *Id.*

8 59. CW1 6 confirmed the referral fees paid by attorneys to LPS . 7 He stated that "all the
9 Money comes from attorneys" – nothing from banks or servicers. LPS signed a host of lifetime
10 Clients for free service. Some of the older LPS clients, including Washington
11

13 6 The former Project Manager at LPS ("CW1") worked in the Jacksonville
14 Headquarters from November 2006 through April 2010. This former employee reported to
15 Newland, who reported to the Vice President of Foreclosure, Chuck Martisek. In this
16 Capacity, CW1's division, which was known as the Outsource or Desktop Division, used
LPS Desktop software to track loans through foreclosure on behalf of LPS' servicer clients.

17 7 All confidential witnesses are referred to in the masculine to protect their identities.
18 Mutual, Option One and Saxon Mortgage Services ("Saxon"), were known within LPS as
19 "Legacy clients" and had "blanket contracts" giving them whatever they wanted. These
20 Contracts obligated LPS to prepare as many custom reports as these servicer clients
21 Requested, and LPS could not change the terms of their contracts even though it was not cost
22 Effective to continue providing unlimited custom reporting to them.
23

24 60. Several former employees detailed how referral fees worked at LPS. CW2 8
25 Recounted that LPS referred business to attorneys based on a client request for action, and
26 Then the attorney paid LPS for the referral. CW 1 also confirmed that LPS was paid based on
27

28 **MOTION TO STAY AND DISMISS BASED ON FRAUD ON THE COURT**

1 Each referral it made from a client to an attorney or law firm in LPS' approved network. By
2 Way of example, CW 1 stated that if Washington Mutual used LPS' outsource services,
3 Washington Mutual would refer a foreclosure to an LPS approved attorney and then the
4 Attorney would pay LPS a "referral fee." CW 1 believed that LPS received \$200 per referral.
5
6

7
8 the former Bankruptcy Specialist at LPS ("CW2") worked in the Mendota Heights,

9 61. Minnesota office of LPS from August 2008 through November 2010. In this capacity,
10 His Duties included analyzing and auditing loans in bankruptcy on behalf of LPS servicer clients
11 Who had responsibility for collecting payments from those loans. He reported to Team Leads
12 And a Supervisor who reported to Manager Jack Junier ("Junier"), who in turn Reported to
13 Assistant Vice President Dory Goebel. He worked mostly with Saxon but also Performed
14 Bankruptcy files audits for American Home Mortgage (formerly Option One). Likewise, CW 169
15 Also explained that attorneys paid LPS for each "process" referral, such as the filing of a Proof
16 Of Claim, a Motion for Relief, an Agreed Order, or other action by the attorneys. This former
17 Employee stated that such filings or actions were known as "processes" internally at LPS.
18 According to CW16, as the attorneys handled more referrals, the total referral fees received by
19 LPS added up. Each subsequent referral generated another payment for the attorney and another
20 Referral fee to LPS. By way of example, CW 16 noted that if LPS referred a Motion for Relief to
21 An attorney, LPS would get x dollars for the referral going to the attorney. CW 16 explained that,
22 At times, attorneys had to file multiple Agreed Orders because the borrower re-defaulted on the
23 Initial or subsequent Agreed Orders. LPS received additional referral fees when the attorneys
24 Received additional fees for making subsequent filings. Moreover, CW 1 recounted that as a

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28 **MOTION TO STAY AND DISMISS BASED ON FRAUD ON THE COURT**

1 Foreclosure can wrap up quickly or it can be delayed (i.e., if the borrower files for bankruptcy),

2
3 The attorney paid LPS \$200 at the outset of the foreclosure but then if the case is stayed or

4
5 Delayed, LPS may collect another \$200 from the attorney when the case resumes.

6
7 9 The former LPS Bankruptcy Financial Specialist in Mendota Heights, Minnesota
8 ("CW 16"), worked for LPS from April 2005 through June 2010. From 2006 through 2008,
9 CW 16 served as a Team Lead Bankruptcy Financial Specialist. In approximately March
10 2008, he had what he describes as a "nervous breakdown" because of the immense pressure
11 to process a huge number of loan files per day, gave up his Team Lead position, and worked
12 From home from 2008 until February 2009. In February 2009, he returned to work in LPS'
13 Minnesota office in the "High Risk" department until approximately October 2009. From
14 Approximately October 2009 until the last day of June 2010, he again worked as a
15 Bankruptcy Financial Specialist. As a Bankruptcy Financial Specialist in 2009 and 2010,
16 CW 16 reported to Supervisor Heidi Wilson. In this capacity, his duties included reviewing
17 Loan files in which there were borrower disputes or problems with escrow accounts and
18 "Ledgering out accounts" to show all dates, payments, and anything financial. The ledgers
19 Were required by courts as part of the bankruptcy adjudication process.

20
21 62. This improper fee arrangement between LPS and network attorneys, which amounted to
22 Fee-splitting, is detailed in the Network Agreements that these parties executed. 10 These
23 Agreements outline a schedule of the fees that will be billed to the client for the completion of
24 Certain legal work by the attorneys and, also for the completion of the same work, the fees that
25 The network attorneys are required to pay to LPS. 11 The schedule shows that the amounts paid
26 By attorneys to LPS are directly tied to, and constitute shared portions of, the amounts paid by
27 Clients to attorneys. *See id.*

28
29 63. While under its business model, the Company was heavily dependent on attorneys' fees,
30 It failed to disclose this to the market, instead offering only vague references to its working
31 Relationship with a network of "independent" attorneys. Not only did LPS keep these fees and

32
33 **MOTION TO STAY AND DISMISS BASED ON FRAUD ON THE COURT**

1 Their impact on Company revenues secret from investors, but it also failed to disclose them to
2 Courts and borrowers in various foreclosure and bankruptcy proceedings throughout the country.
3 As CW2 explained, LPS never disclosed its sharing of attorneys' fees to the court or borrowers.
4 Although "network attorneys" submitted requests
5

6 **10 An exemplar Network Agreement is attached hereto as Exhibit B.**
7

8 11 In addition to the Network Agreements, LPS' network arrangements involved
9 Default Services Agreements ("DSAs") between LPS and its bank and mortgage servicer
10 Clients. An exemplar Default Services Agreement is attached hereto as **Exhibit C**. The
11 DSAs set forth the manner in which LPS would retain and work with attorneys in the course
12 Of providing foreclosure, bankruptcy and related default matters. Under the DSAs, only
13 Network attorneys that executed Network Agreements would be "selected and retained by
14 [LPS]." Those network attorneys were managed by LPS, but paid by LPS's bank and
15 Mortgage servicer clients pursuant to fee schedules attached to the DSAs. to courts for attorney
16 fees as part of bankruptcy proceedings, they failed to alert the court that
17 Some portion of those fees was actually going to LPS.

18 **3. The Network Firms Were Not "Independent"**

19 64. Throughout the years , Defendants misled investors as to its true relationship with its
20 Network attorneys. While in its public filings LPS touted its network of "independent attorneys,"
21 nothing could be further from the truth. As CW2 stated, "LPS controlled the attorneys." This
22 control was critical to the success of the Company's business model. With the network attorneys
23 under its thumb and operating at its whim, LPS could push through foreclosures as quickly as
24 possible, earn more business from its bank and servicer clients, expand its market share, earn
25 more fees from the attorneys, and thereby increase the Company's profits.

26 65. LPS' control over its network attorneys is evident from the role it played in selecting
27
28

1 Attorneys for various cases. While the Company represented that its clients could use any
2 attorneys they wanted, this was misleading. Only attorneys who have signed a Network
3 Agreement with LPS can use its process management system. *See Newland Dep.* at
4 95:6-9. Newland testified the Company's clients are limited in that if they want the loan to
5 Stay on the Company's system; they have to use an attorney in the LPS network because
6 Attorneys who are not in the network do not have access to the Company's system. *See Id.* at
7 95:10-19; 96:9-13. 12 This is supported by the language of LPS' DSAs, which limited its
8
9

10
11 12 While Newland mentioned a seemingly implausible exception where, in lieu of using
12 a network attorney, a client could update the system "just like an attorney," when pressed for
13 Details about this unrealistic alternative, Newland was at a loss. *See Id.* at 96:14-25; 97:1-10.
14 Clients' choice of attorneys to the "nationwide network of natural persons, law firms,

15 Foreclosure trustees, professional organizations and third persons *who have executed [an*
16 *LPS] Network Agreement.*" *See Exhibit C* at 5; *see also id.* At 9, 16-17.

17 66. Even among "network attorneys," LPS had a heavy hand in selecting who would be used
18 By a particular client. In some instances, LPS employees would simply select an attorney for the
19 Client. For example, CW3 13 stated that LPS selected the attorneys for the handling of
20 Foreclosures. According to this former employee, even if the client wanted to use its own
21 Attorney, and pay for it, ultimately works "went through the attorney that Lender Processing
22 Services picked." In addition, LPS also selected attorneys to handle the resale of foreclosed
23 Properties. CW4 14 recounted that he had witnessed LPS getting mortgage loans from banks
24 Without an attorney referral and then "picking an attorney for them to go to." Indeed, he noted
25 That there were mortgage loans that come into the LPS queue or system that "don't have lawyers
26
27

28 **MOTION TO STAY AND DISMISS BASED ON FRAUD ON THE COURT**

Assigned to them and an LPS staff member would manually go into the system “and assign an Attorney to those files.” Likewise, CW 16 explained that LPS had an automated process that Automatically referred loan files to particular law firms if a borrower’s payments were late Beyond a certain number of days or if other pre-defined

13 The former REO Asset Manager at LPS (“CW3”) was employed with LPS from August 2008 through September 2009. In this capacity, he dealt with the maintenance and Sale of foreclosed properties that were on the market for resale.

14 The former Financial Support Supervisor (“CW4”) worked for LPS in Jacksonville, Florida from August 2008 through March 2010 and reported to the Sales Reporting Supervisor. Triggers were met. The process for selecting the attorney to receive each referral was also automated, and was based on the lender’s list of pre-approved attorneys, and the district or Territory where the property was located. Sometimes the automation did not work, in which Case there was a spreadsheet that guided who received the referral. However, as CW 16 Noted, the banks were not typically involved in referring individual cases to attorneys.

67. In other instances, LPS would significantly influence which attorneys would be used. CW1 stated that “the standard thing at LPS was that we don’t tell people who to use. But clients Asked for recommendations,” and LPS was more likely to recommend lawyers who had a closer Relationship with LPS. The former Project Manager explained that “certain attorneys had better Relationships with LPS,” and such relationships “didn’t hurt” those attorneys’ chances of being Selected by servicers. Indeed, as CW4 explained, LPS “has a lot of referrals to certain law firms.” For example, CW1 noted that attorney James Albert Elli had a luxury suite at the Jacksonville Jaguars’ football stadium and “LPS senior management went there a lot.”

68. Even aside from the initial referral, the Network Agreement further illustrates that LPS is The puppeteer of network attorneys. Indeed, network attorneys are required to “follow the Time frames and communication requirements” provided by the Company and take certain Specified legal actions upon the request of the Company (e.g., attend hearings, object to a

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1 Debtor's plan, file motions for adequate protection and for relief from stay, prepare and send
2 Demand letters, etc.). **See Exhibit B.** Moreover, under the LPS model, attorneys and clients were
3 Strongly discouraged from communicating with one another. CW515 definitively explained
4 About LPS' relationships with law firms, that the client (*i.e.*, bank or investor) was "not to get
5 Into direct contact with the attorney" that would be handling the foreclosures on behalf of the
6 Bank or investor. Through this system, LPS was, in effect, "the filter" between any
7 Communications between the bank/investor and their attorney and, in such a way, ensured that
8 There was no direct communication between the two. Any communication between the client
9 And the attorney was routed by LPS staff and not permitted to be direct. CW3 also explained that
10 LPS controlled communication between the attorneys it selected and the clients, requiring
11 Attorneys to First speak to the Lender Processing side. In fact, according to CW5, LPS would
12 Refer to the Banks/investors as their "clients," even though in reality, the banks/investors were
13 the clients of the attorneys handling their foreclosures.

14
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16
17 69. LPS' control of the communications between its network attorneys and their clients is
18 Evidenced by numerous opinions issued by Federal Bankruptcy Judges. In Judge Sigmund's
19 April 15, 2009 opinion in *In re Taylor*, No. 07-15385 (Bankr. E.D. Pa. Apr. 15, 2009)
20 (Hereinafter "Taylor"), 16 Judge Sigmund discusses the review she undertook of the NewTrak
21 System that was later integrated into LPS Desktop. Judge Sigmund notes that
22

23
24 15 The former LPS Operations Specialist and Auditor ("CW5") worked at the
25 Jacksonville, Florida office of LPS from June 30, 2009 through August 24, 2010. In this
26 Capacity, he worked in the area of foreclosures, describing himself as a "foreclosure
27 Specialist and auditor." In particular, this former employee's role involved the "government
28 Service entity" side or "GSE," meaning Freddie Mac and Fannie Mae. In this capacity, he
Handled some sales reporting and audited what was already reported for compliance and
Accuracy so that fines could be avoided.

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1 **16 Taylor is attached hereto as Exhibit D.**

2 “New Trak manages, without human interaction, the relationship between [the client] and its
3 Attorneys in the collection of delinquent mortgage loans through automated responses in
4 Certain ques.” *Taylor* at 7. The opinion states that “[t]he retained counsel does not address
5 The client directly nor does it address another counsel that may be performing tasks for [the
6 client] in the same case, even when the separate attorneys are handling related matters.” *Id.*
7 At 30. The attorney in that case “believed he was precluded from making any direct contact
8 With the client.” *Id.* at 33. Indeed, the attorney did not “believe it could deviate from that
9 Form of consultation even when the Court expressed concern over the handling of the Stay
10 Motion.” *Id.* at 46. Likewise, in a Memorandum Opinion dated April 6, 2011 in *In re*
11 *Wilson*, No. 07-11862 (Bankr. E.D. La. Apr. 6, 2011) (hereinafter “*Wilson*”), 17 Judge
12 Magner granted a Motion for Sanctions as to the liability of LPS. In so doing, Judge Magner
13 Held that “LPS managed the communications between Option One and its counsel”
14 *Wilson* at 24.

15 70. such a way, network attorneys were kept in the dark by the limited information they
16 received
17
18 From LPS. According to CW2, his supervisor told him that “we are not allowed to give clients
19 numbers or true details.” He and his co-workers were directed to generalize when talking to
20 counsel. For example, they could tell attorneys that certain amounts were misapplied to a specific
21 loan post-petition but could not reveal how funds were misapplied in a specific amount on a
22 specific day. Accordingly, although LPS would get
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28 **MOTION TO STAY AND DISMISS BASED ON FRAUD ON THE COURT**

1 17 *Wilson* is attached hereto as Exhibit E.

2 Recommendations from local counsel based on LPS findings, such advice was limited by
3 What LPS told them?
4

5 **4. Network Law Firms Are Kept In Line with Attorney**
6 **Performance Reviews**

7 71. In order to facilitate the speed and success of the LPS business model, the Company
8 needed

9 A mechanism to “encourage” network attorneys to complete their work as quickly as possible.

10 CW 1 explained that APR were a metric that LPS used to track and rate the performance of
11 Attorneys who assisted LPS servicer clients with foreclosures and bankruptcies. 18 APR ratings
12 Were “strictly based on speed” and ranked attorneys based only on how quickly they performed
13 Various tasks on behalf of servicers.
14

15 72. Newland confirmed the Company’s APR ranking system. Newland Dep. at
16 167:10-13. He explained that the “APR ranking is based off of the completion of events that
17 Are within the APR scoring module.” *Id.* at 169:9-14. There are recommended time frames
18 For completing events (*e.g.*, a foreclosure sale), and the APR measures how the attorney does
19 In completing these events within those time frames. *Id.* at 169:15-25 and 170:1-5.
20

21 **73. As Reuters stated:**

22 Interviews, deposition transcripts and LPS’s own records underline that the
23 company keeps its clients happy and maximizes its own fee income by
24 Whipping law firms to gallop cases through the courts.

25 The law firms are on a stopwatch: Kersch confirmed that the LPS Desktop
26 System automatically times how long each firm takes to complete a task. It
27 Assigns firms that turn out work the fastest a “green” rating; slower ones
28 “Yellow” and “red” for those that take the longest.

34
MOTION TO STAY AND DISMISS BASED ON FRAUD ON THE COURT

1
2 **18 An exemplar APR is attached as Exhibit F.**

3 Court records show that green ratings go to firms that jump on offered
4 Assignments from their LPS computer screens and almost instantly turn out
5 Ready-to-file court pleadings, often using teams of low-skilled clerical
6 Workers with little oversight from the lawyers. Copies of company
7 Newsletters from shortly before LPS was spun off show that the company
8 Each year gave awards to the law firms that were consistently the fastest.
9 Firms that move more slowly were slapped with "red" designations. For
10 Them, work offers dried up.

11 Reuters at 4.

12 55. Accordingly, network attorneys were at the mercy of LPS, who handled more than 50% of
13 The industry's residential mortgage volume. These attorneys had to learn to operate successfully
14 Within the confines of the APR to continue to receive LPS referrals. While Defendants' business
15 Model both increased the Company's market share and provided a constant source of revenue, it
16 Also eviscerated the client-attorney relationship and led to improperly rendered legal advice.

17 56. Indeed, Defendants' influence over the attorneys in its network constituted the unauthorized
18 Practice of law. Moreover, their charging of referral fees and fee-splitting arrangements were a
19 Violation of applicable laws. These arrangements were clearly impermissible and violated
20 Provisions of federal law (including 18 U.S.C. § 155), the U. S. Bankruptcy Code and various
21 Codes of professional responsibility across the country. As Judge Sigmund stated in *Taylor*, the
22 "Barrier that New Trak supplies to obstruct client/attorney communications is contrary to the
23 Model Rules of Professional Conduct." *Id.* at 45. "Since there is no client consultation and since
24 The lawyer is simply tasked to file a motion based on a pre-coded event or a claim objection
25 Based on a claim not filed by that firm, the Rules of Professional Conduct appear to have been
26 Subordinated to this automated system." *Id.* at 46. 19 Accordingly, Defendants led the market to

27
28 **MOTION TO STAY AND DISMISS BASED ON FRAUD ON THE COURT**

1 Believe that they worked with an independent network of Attorneys, in reality, Defendants'
2
3 Business model was completely improper and utterly unsustainable.

4 **C. LPS Engages in Illicit Practices to Push through Foreclosures** 5 **And Bankruptcies at Rapid Rates to Increase Profits**

6 **57.** Defendants' improper business model and the economic downturn generated tremendous
7 Volumes of default work for LPS, which they were determined to push through the Company's
8 System at rapid rates in order to drive market share and profits. To accomplish this, LPS
9 Employed various illicit practices at all of its offices to churn as many files as quickly as possible.
10 These practices included: the fabrication of documents, "robo signing," forging or surrogate
11 Signing, improper notarization of documents, violation of security protocols, and concealment of
12 Known mistakes from courts, attorneys, and clients. While through these practices LPS
13 Ultimately attained the record profits it sought, Defendants' operations were teeming with
14 Fraudulent conduct.

16 **1. The Company Fabricates Missing Assignments to** 17 **Foreclose on Homeowners**

18 **58.** In order to foreclose on a home, a foreclosing entity must establish ownership of the
19 Mortgage at issue. *See* Reuters at 2. In the recent housing boom, mortgages were generated at an
20 Incredible pace and, in many cases, subsequently transferred to trusts owned

21
22 19 While Judge Sigmund did not impose sanctions on LPS in *Taylor*, it was only
23 Because "[w]hile NewTrak prescribed that approach, LPS did not dictate how they would
24 Handle cases referred to them when problems with the procedure were apparent." *Taylor* at
25 56.
26 By investors who bought securitized packages of mortgages. *Id.* Such a transfer requires a
27 Mortgage assignment to be created, which transfers ownership from the original lender to the
28 Next owner (*i.e.*, trusts). However, as was recently brought to light in the media, many

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1 Original lenders never handed over ownership of the mortgages to the trusts. *See* Reuters at
2
3 2. Only the holder or owner of a mortgage can institute a foreclosure action in the event that
4 The homeowner stops making their mortgage payments. 20

5 **59.** Without the assignments, LPS' customers could not complete foreclosures and LPS therefore
6 Could not profit. Accordingly, with the help of its subsidiary DocX, 21 LPS produced significant
7 Numbers of invalid assignments on behalf of banks so that its clients could foreclose on
8 Homeowners. *See* Reuters at 2. Indeed, creation of missing or lost assignments was one of the
9

10 **Emergency Original Petition for Wrongful Foreclosure**

11 Very services DocX offered its customers for a fee. As is evidenced by a DocX rate sheet, DocX
12 Offered the following services, among others, for a specified fee: 22

- 13 • Create Lost Note Affidavit
 - 14 • Create Missing Intervening Assignment
 - 15 • Cure Defective Assignments
-

16 20 *See* June M. Clarkson, Theresa B. Edwards and Rene D. Harrod, Office of the
17 Attorney General, Economic Crimes Division, *Unfair, Deceptive, and Unconscionable Acts*
18 *In Foreclosure Cases* (hereinafter "Attorney General Presentation"), attached as **Exhibit G.**

19 21 In 2005, Fidelity National Financial, Inc. ("FNF") acquired DocX, which was spun
20 Off with LPS in 2008. On February 1, 2006, FNF merged with Certegy Inc. to form FNIS.
DocX was located in Alpharetta, Georgia.

21 22 A copy of the DocX rate sheet is attached hereto as **Exhibit H.**

- 22 • Recreate Entire Collateral File

23
24 74. This was confirmed by CW6, 23 who explained that if a servicer was missing an
25 Assignment in a file, DocX would e-mail the servicer to request a copy of the assignment.
26 However, if the servicer could not locate the assignment, DocX would simply prepare a new
27

28 **MOTION TO STAY AND DISMISS BASED ON FRAUD ON THE COURT**

1 Assignment of title. DocX had even acquired some "newer lender" clients who "had missing
2 Assignments in almost all cases."

3 75. CW724 explained the process by which documents such as assignments were
4 Generated at DocX. Indeed, he explained that Data Entry employees took information from
5 Scanned documents on their computer screens and entered it into LPS Desktop software to
6 Create assignments of mortgage. These employees entered data such as the loan amount,
7 Person's name, address and a property description. Data Entry employees *did not perform*
8 *Any analysis or verify any information*; they just pulled information from one screen and
9 Entered it into another. CW7 then printed those documents through LPS Desktop and took
10
11

12 23 The former DocX Customer Service Representative ("CW6") was employed with
13 DocX from August 2005 through May 2010. He reported to Team Leads who, in turn,
14 Reported to Rene Gaglione ("Gaglione"). This former employee was tasked with entering
15 Data from client files, including "collateral files" and "payoff files" into a DocX computer
16 System to prepare forms that he would print and sign with other DocX employees in front of
17 A notary. This former employee worked with banks and servicers, including Litton Loan
18 Servicing's, Select Portfolio, and MorEquity, Inc.

19 24 The former DocX Data Entry Clerk ("CW7") was employed with DocX from April
20 2009 through February 2010, and was hired as a temporary employee. This former
21 Employee reported to Melissa Cleary, who reported to Shelly Scheffey ("Scheffey"). In this
22 Capacity, he did data entry, and also prepared cover sheets for different states related to
23 Foreclosure properties and on a few occasions signed these documents as a witness.
24 Them into the "Signing Room" at DocX, where a supervisor took the documents and handed
25 Them out to signers.

26 76. Prior to and throughout the Period, the Company produced, at a minimum,
27 Hundreds of thousands of invalid assignments and other mortgage-related documents for use in
28 Foreclosure cases. The invalid nature of these assignments is evident from repeated problems in
The assignments that highlight their illegitimacy. Indeed, LPS executed assignments fraught with
Deficiencies, including but not limited to: (1) signatures and dates *after* foreclosures were

29 **MOTION TO STAY AND DISMISS BASED ON FRAUD ON THE COURT**

1 Initiated for mortgages that should have been handed over to trusts; (2) signatures by LPS
2 Employees purporting to be officers of lenders that no longer exist; (3) incomplete or non-
3 Existent grantees or grantors such as "bogus assignee" or "bad bene"; (4) improper effective
4 Assignment dates such as "9/9/9999;" and (5) blank signature lines witnessed and notarized. *See*
5 **Exhibit G; Reuters at 2-3.** Assignments and other mortgage documents with these deficiencies
6 Were filed all over the country in county clerk offices and with courts from as early as 2006 to
7 2010. 25 Moreover, documents with deficiencies that rendered them invalid were generated in
8 Both its LPS Alpharetta (**DocX**) and its Minnesota locations. *See Reuters at 3.*

11 77. The discrepancies in the documents produced by LPS were also confirmed by
12 Confidential witnesses. CW8 26 explained that during his tenure, he had pointed out to his
13 25 *See*

14
15 **25 See Composite Exhibit I.**

16 26 The former Member of the DocX Foreclosure Department ("CW8") was employed
17 With the Company from 2006 through April 2010. He began as a mail clerk and was
18 78. supervisor, Scheffey, the Operations Manager, that some documents were being released
19 With "bogus assignee" or "bogus assignor" as the signatory. Moreover, there were
20 Documents that did not have the correct "maturity date" and instead specified the maturity
21 Date as "99/99/99." CW927 also confirmed the discrepancies in the assignment documents.
22 This former employee explained that the appearance of the terms "bogus assignee" and "bad
23 Bene" on mortgage related documents were the result of human error. These entries on
24 Assignments were merely placeholder terms on the assignment documents that could not be
25 Left blank. Likewise, the date 09/09/99, which has shown up on numerous DocX-prepared
26 Documents, was the result of a glitch in the LPS desktop system, which would occur if this

27
28 **MOTION TO STAY AND DISMISS BASED ON FRAUD ON THE COURT**

1 Date was not overwritten with an actual date. As CW8 explained, assignments released with
2 These deficiencies were the result of a lack of quality control on entries that were done by the
3 keyers at DocX. Documents lacking the proper signatory and/or maturity date should have
4 Remained in the Company's "exception queue" but instead were released improperly.
5 However, when CW8 brought this issue to the attention of higher-ups, such as Gaglione and
6
7
8

9 Promoted first to data entry and then to the foreclosure department in mid-2009. In this
10 Capacity, this former employee reported to Scheffey, Rebecca Ohde, and Tony Raymond.

11 27 The former Client Care Services Manager ("CW9") was employed with DocX from
12 July 2008 through September 30, 2010. This former employee reported to Scheffey, who in
13 Turn reported to Gaglione, who then reported to Lori Brown O'Reilly ("Brown"). He
14 Managed a team that supported document management services for large mortgage servicers.
15 This included the processing of assignment documents used in the foreclosure process.
16 Brown, they instructed him to just send out the documents even with these discrepancies, and
17 That he should only worry about it if the documents were returned.

18 **2. LPS Abused Client Authority and Required Employees** 19 **to "Robo-Sign" Documents**

20 79. Through its business model, LPS managed default services for a significant portion of the
21 Industry, and as a result, had millions of documents to execute and sign. These documents often
22 Required signatures from bank officials. Since obtaining signatures on such significant volumes
23 Of documents is very time-consuming, CW6 explained that each client designated between two
24 And four people at **DocX** with "signing authority" for those clients. In delegating authority to
25 DocX employees, the **LPS bank/servicer clients** would first review copies of various **DocX**
26 Employees' signatures to decide which employee they wanted to designate to various titles,
27 Including Vice President and Assistant Vice President or Secretary. Because different states
28 Required differently titled employees to sign Assignments of Title and Releases of Liens, the

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1 LPS clients designated several titles to different LPS employees. This was confirmed by CW9,
2 Who explained the procedure (which came down from upper management) by which employees
3 Of DocX would sign assignments that would have normally been signed by a representative of
4 The client (e.g., Wells Fargo and American Home Mortgage). As this former employee
5 Explained, there was a corporate resolution signed between DocX and their clients giving DocX
6 Employees the authority to sign as a representative of the client. This was done solely to speed
7 Up the turnaround time of getting the documents completed and filed.
8
9

10 80. LPS abused this delegated signing authority to push through the large volume
11 Of foreclosures by requiring its employees to "robo-sign" documents needed to complete files
12 For foreclosure. The practice of robo-signing involved LPS employees signing documents
13 Without verifying or reviewing their content and, in many cases, not even knowing what it was
14 That they were signing. This practice was pervasive throughout the Company.
15

16 81. LPS went so far as to set up specific rooms to facilitate this improper conduct.
17 At DocX, this practice occurred in a "signing room" also known internally as the "forging
18 Room." Indeed, CW 10 28 explained that there were multiple signing rooms at DocX.
19 Robo-signing of various mortgage-related documents was also confirmed by CW7 and CW8.
20

21 82. In the Signing Room there were 10 to 20 employees sitting at tables with large stacks of
22 Documents on one side of them. CW7 explained that each person pulled a page off the top of the
23 Stack near them, signed that page and moved it to another stack next to them. They did not
24 Appear to perform *any analysis, review or verification* of any details in the documents they were
25 Signing. These documents included mortgage or promissory notes, and assignments of
26 Mortgages. As CW 11 29 explained, at first, the signers worked in
27

28 **MOTION TO STAY AND DISMISS BASED ON FRAUD ON THE COURT**

1
2 28 The former **DocX** Business Unit IT Executive ("CW10") was employed by **DocX**
3 From November 1994 through October 15, 2010. He essentially fulfilled the position of
4 "Chief Information Officer" of **LPS Document Solutions division of DocX**. This former
5 Employee reported directly to Brown, who in turn reported to Clay Cornett (President of **LPS**
6 Default Solutions). This former employee was responsible for supervising all IT-related
7 Issues within **DocX** and even helped shut down the unit.

8 29 The former Document Scanner ("CW 11") was employed with DocX from September
9 2006 through February 2010. He began working for **DocX** as a temporary employee in the
10 Capacity of a document "prepper," and was promoted to scanner. In that role, he scanned
11 Mortgage documents and then checked them for accuracy. This former employee reported to
12 Tina Detwiler and Rebecca Ohde, who reported to Gaglione.

13 An open area at the office. But, when clients came to visit the site, they made some
14 Complaints made about the signers and so that group was moved to a closed "middle room"
15 In the office with a door at each end. Managers closed the doors when clients came through
16 So the clients would not see the signers. Most days when clients were not visiting, they left
17 The doors open and people could walk through the signing room on their way from one part
18 Of the building to another.

19 83. CW12,30 who signed Releases of Assignments and Refinance documents, elaborated on
20 The robo-signing process at **DocX**. He stated that each signer received a batch of documents and
21 Had to "sign whatever page" they had in front of them, even if it was not their name on the page.
22 CW 12 and the other signers had a big stack of documents in front of them. He would pull a page
23 Off the top of the pile, signed it *without reading or analyzing it*, and then moved it to a signed
24 Pile to be notarized. This former employee recounted that at first, all the signers were in a big
25 Room together with data entry employees but then the signers were moved into a dedicated
26 Signing room, purportedly because business was growing and **DocX** needed more space for data
27 Entry employees.

28 **MOTION TO STAY AND DISMISS BASED ON FRAUD ON THE COURT**

1 30 The former Document Executioner ("CW 12") worked at **DocX** from September 2006
2 Through April 2010 when he was laid off shortly before **DocX** shut down. Originally, this
3 Former employee began working at **DocX** as a temporary employee and then he was hired on
4 As a permanent employee in February 2007. His title changed three times during his
5 Employment and included a "sign and stamp clerk," a "document executioner," and a "data
6 Entry employee." His duties remained constant regardless of his title. CW12 had three
7 Supervisors during his employment, all of whom reported to Gaglione and Kim French
8 ("French").

3. LPS Requires Employees to Forge Signatures Through An Arrangement Called Surrogate Signing

8 84. In order to further expedite the ro-bo-signing process, **LPS** employed practice called
9 "Surrogate signing," by which it required its employees to sign or forge the names of those
10 Individuals at the Company who had been given signing authority by clients. Indeed, as CW 1
11 Explained, while there were managers at **DocX** with the authority to sign for banks, **DocX**
12 Instead employed lower-level employees to forge the signatures of those authorized managers.
13

14 85. Indeed, as CW 11 relayed, people were supposedly "signing" documents but really were
15 "Forging" documents. Gaglione was in charge of the Signing Department, which employed some
16 Temporary and some full-time employees. After "temps" were freshly hired to work in the
17 Signing room, they were directed to try signing a variety of other people's names. Whichever
18 Signature they could mostly closely emulate was the signature they were directed to sign, over
19 And over again.
20

21 86. This was also confirmed by Chris Pendley ("Pendley") in an interview for the Television
22 Program 60 Minutes. 31 He represented that on his first day as an employee at **DocX**, he was
23 informed that he was going to be signing documents using someone else's name. He recounted
24 that he would sign documents as though he was an officer of a bank and would sometimes be
25 "Vice President" of as many as five to six different banks on a given
26
27

28 **MOTION TO STAY AND DISMISS BASED ON FRAUD ON THE COURT**

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2 31 See Interview with Scott Pelley, correspondent for 60 Minutes (April 3, 2011), "The
3 Next housing shock," dated April 3, 2011, a transcript (unofficial) is available at
4 [http://www.cbsnews.com/stories/2011/04/01/60minutes/main20049646.shtml?tag=currentVi](http://www.cbsnews.com/stories/2011/04/01/60minutes/main20049646.shtml?tag=currentVideoInfo)
DeoInfo; segment Title (last visited May 18, 2011)

5 Day. Pendley explained that DocX employees had to sign at least three hundred and fifty
6 Documents an hour and that he alone signed four thousand a day. He was paid \$10 an hour
7 To sign documents in this manner. The 60 Minutes episode also revealed that some of the
8 Supposed bank vice presidents at DocX were only high school kids.

10 87. CW 1332 confirmed Chris Pendley's account of the Company's signing room. "We had
11 to
12 Sit there all day and sign other people's names." CW 13 did not know what he was signing, and
13 Neither did his co-workers. He stated that "whenever you ask a question," Jeffrey Baldwin
14 ("Baldwin") and Gaglione would say "don't worry about it." Indeed, this former employee
15 Signed approximately 3,500 documents a day and stated that "sometimes I'd be five different
16 Bank officers for different institutions" in one day. He would sign for both women and men
17 Because he had good handwriting. On his first day at DocX, Gaglione held a meeting and
18 Explained surrogate signing and claimed it was legal and approved by DocX clients. CW13 was shown a
19 Number of signatures and asked to practice signing just like them. Then based on whose signatures he
20 Could most closely emulate, he was directed to sign those names. Gaglione "literally sat in the signing
21 Room with us. She was well aware of what was going on." CW 13 stated that he and his co-workers
22 Would listen to iPods and "from start to when you leave, sign documents. Don't even look at what you
23 Are signing. They give you 3,000 pages and seven people need to sign that batch. You need to flip
24 Through and sign the name assigned to you. We had no idea what we were signing.

26 32 The former Document Signer ("CW 13") was employed with DocX from March 2009
27 Through the end of 2009. He was placed with DocX through the temporary service;

28 **MOTION TO STAY AND DISMISS BASED ON FRAUD ON THE COURT**

1 Manpower.

2 Everything had to be rapid, at least 3,000 per day.” As CW 13 recalled, “they had us coming
3 In on weekends to sign from nine a.m. to six p.m. on Saturday to sign them.”
4

5 88. The Company’s surrogate signing practices were also confirmed by former LPS
6 employee

7 Cheryl Denise Thomas, 33 who testified that she personally signed an assignment of mortgage
8 As a Vice President for Mortgage Electronic Registration Systems, even though she was not a
9 Vice president of that company. *See* Thomas Dep. at 42:18-25 and 43:9-25. Moreover, Thomas
10 Explained that numerous mortgage assignments were signed by “surrogate signers.” *See* Thomas
11 Dep. at 45-51. Thomas explained that they were told that surrogate signing was “legal” and
12 “Okay.” *See* Thomas Dep. at 54. Managers such as Gaglione and Scheffey told employees to fill
13 Out a form indicating that other employees could sign for that person. *See* Thomas Dep. at 55-56.
14 Thomas explained that the Company hired a lot of temps to serve as surrogate signers and
15 Notaries. *Id.* at 77. Thomas testified that the surrogate signing procedures occurred before and
16 After DocX became part of LPS. *Id.* at 57.
17

18 89. In addition to Thomas and CW 13, numerous former employees explained how DocX
19 Managers told LPS employees that surrogate signing was a legal practice that was approved by
20 Clients. For example, CW6 recalled a meeting in the fall of 2008 or early 2009, at which a DocX
21 Manager said “delegated signing” was legal and approved by clients.
22

23
24 33 See Excerpts of the Deposition Transcript of Cheryl Denise Thomas dated March 23,
25 2011 (“**Thomas Dep.**”), in **Wells Fargo v. Mariskovic**, No. 09-00764 (Fla. 9th Cir. Ct),
26 **Attached as Exhibit J**. Thomas held a lot of different positions and had many different
27 Responsibilities at **DocX**. Thomas Dep. at 10:22-25 and 11:1-11. Her last position before the
28 Closing of DocX was working in the Reject Department. *Id.*

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1 90. Pendley also explained that while the practice seemed strange, he and his colleagues were
2 Repeatedly told that everything was above board and legal. Likewise, CW 14, 34 who referred
3 To himself as a "surrogate signer," recounted questioning this practice to his supervisor in
4 2009 and asking for an explanation as to why his name could be used without his reviewing
5 And/or signing the document. He was told it was because he signed a document when he was
6 Hired authorizing his name to be auto-signed. CW9 further described this document, which
7 Was called a "surrogate signer agreement." This former employee explained that this
8 "Agreement" was signed by the DocX employees who were responsible for signing the
9 Clients' mortgage assignments and supposedly gave other DocX employees the ability to sign
10 Client documents in place of the authorized DocX employees.
11
12

13
14 91. Questions regarding surrogate signing were not welcome. As CW12 explained, if you
15 asked
16 Any questions about whether signing other people's names was legitimate, "I guarantee you a
17 Week later you would be fired." This was confirmed by CW 13 who stated that another
18 Colleague who was a friend of his asked what they were signing and questioned whether the
19 Process was legal. As a result, he was fired. Indeed, CW12 relayed that Gaglione was renowned
20 For firing people with little or no provocation. Moreover, CW 11 recounted that he saw an
21 Employee terminated from DocX because he could not sign someone else's name correctly. This
22 Former employee stated that a few people asked
23

24
25 34 The former Source Document Specialist ("CW 14") was employed with DocX from
26 2003 through May 2010. In this capacity, he was responsible for "prepping mortgage files"
27 And was a "surrogate signer."

28 Questions about the Company's business practices, including the forging. In response,

MOTION TO STAY AND DISMISS BASED ON FRAUD ON THE COURT

1 Management got testy and said, "Just do your job."

2
3 92. Brown, the President and founder of DocX, was intimately aware of the ro-bo signing
4 And surrogate signing practices at DocX. As CW 12 explained, Brown told everyone
5 What to do. "Lori knew people were signing other people's names. She would be in the
6 Signing room" and sat with the signers when they had to work overtime. Lori even brought
7 The signers and notaries donuts or other snacks when they had to work late and would linger
8 In the signing room and talk with the signers while they did their work.
9

10 93. The Company's surrogate signing practices are further evidenced by documents filed
11 with
12 County clerk offices and courts throughout the country. Indeed, as has been widely discussed in
13 The media, many **DocX** documents were repeatedly signed by "bank officers" such as Linda
14 Green. Linda Green apparently signed hundreds of thousands of mortgage assignments as a
15 "Vice Pr-esident" at a minimum of 14 different banks and mortgage companies. **See Exhibit G.**
16 In reality, Linda Green was an **LPS/DocX** employee and not a bank officer. Moreover, a study
17 Of the signatures on documents supposedly signed by Linda Green reveals that Linda Green's
18 Name was signed by many different people, who had very different handwriting:
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20 **Original Petition for Wrongful Foreclosure**
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12 **4. The Company Encourages Improper Notarization**
13

14 94. In addition to forging documents and ro-bo-signing without review, the Company also
15 Engaged in improper notarization of the documents it was executing. To be valid, assignments
16 And other mortgage-related documents had to be notarized. Notarization reflects that the
17 Documents were authentic and people signing the documents were who they purported to be.
18 There are certain protocols that notaries are required to follow before notarizing a document.
19 Despite the legal significance attributed to their notarization, the Company also caused tons of
20 Documents to be fraudulently notarized. Mortgage assignments filed in county clerk offices
21 Show That the Company's signing and notarization practices were not limited to DocX but also
22 Occurred at **LPS' other offices. Reuters at 1.**
23

24 95. For example, Thomas testified that she notarized anywhere between one to a thousand
25 Documents at DocX on any given day. *See* Thomas Dep. at 23:17-25. Thomas explained that
26 She was instructed not to be in the room when assignments were being signed and would
27

28 **MOTION TO STAY AND DISMISS BASED ON FRAUD ON THE COURT**

1 Notarize documents without seeing them signed by the signatories. *See Thomas Dep. at 26: 1-9*
2 *And 10-25; 27: 1-25.* Thomas raised questions to supervisors as to why many people (whose
3 Signatures she was notarizing) signed as corporate officers (e.g., vice presidents,
4 Secretaries, etc.). She was told to do what she was required to do, that it was “covered,”
5 *And that there was legal documentation. See Thomas Dep. at 31-32.* Indeed, Thomas
6 Testified that Gaglione would keep her away from the signing room and told her it was
7 None of her business who’s in the room. *Id. at 64:7-12.* In addition, Thomas stated that she
8 Has notarized documents that she knew a surrogate had signed. *Id. at 58.* When Thomas
9 Left, her notary stamp was destroyed by the Company. *See Thomas Dep. at 32:21-25 and*
10 *33:1-24.*

13 96. This was confirmed by CW 12, who explained that after the documents were ro-bo-
14 signed,

15 The notary got a big stack of documents to stamp and sign. Company notaries would notarize
16 Documents indicating that they had witnessed the identified person sign the document, even
17 Though they never observed the actual signing nor verified the identity of the signer. Likewise,
18 CW13 explained that DocX insisted that one of his colleagues, a friend who lived in Fulton
19 County, become a notary so that he could notarize the documents they were signing. That friend
20 Would sign and notarize the documents and still have to sign as someone else in the same
21 Document.

23 **5. Although DocX Was Shut Down, Illicit Practices** 24 **Continued and Were Widespread**

25 97. The fraudulent practices described above resulted in an overwhelming number of
26 fraudulent

27 Documents being filed with county records offices and in court proceedings. The handwriting

28 **MOTION TO STAY AND DISMISS BASED ON FRAUD ON THE COURT**

1 Was on the wall, and, likely sensing an impending legal and public relations catastrophe, the
2 Company was eventually forced to shut down DocX. According to CW6, in the late summer or
3 Early fall of 2009, a team of five or six auditors arrived at DocX. These auditors locked
4 Themselves in the signing room and went through thousands of files. They were "dragging in
5 Hundreds of boxes of documents" into the signing room. Then, in mid-January of 2010, the
6 Company informed its employees that DocX was closing down, explaining the reason for the
7 Closure as business not being as good as it needed it to be. By September 2010, DocX was
8 Officially closed.

11 98. However, Defendants' illicit practices, which were not limited to **DocX**, continued
12 Unchecked at its other locations. This was confirmed by CW2, who explained that the official
13 Company story is that **LPS** stopped allowing employees to sign other people's names to
14 Documents in 2008 and terminated the practice because of **DocX**. However, when he worked at
15 The **LPS Minnesota office**, he "knew people were signing for [**LPS employee**] **Dory Goebel**."
16 While **LPS** liked to claim they fixed the problem in 2008, the solution was essentially no better.
17 For example, he explained that his peers or team leads who he referred to as "trained monkeys"
18 Would simply take two screen printouts to whoever was supposed to sign, show them the
19 Printouts and say, "we need an affidavit" and the appropriate person had to sign. Indeed, CW2
20 Detailed that **LPS processes** "relied exclusively on two or three screens" that showed
21 Information From the loan records maintained by the servicer but "ignored other screens that
22 Showed they were wrong." **LPS** policy was to follow a rote process "that said just look at
23 Limited screens." This former employee stated that "[t]hey were not verifying the information is
24 Correct, only that it existed on one screen shot." In addition, **LPS** began shifting ro-bo-signing
25 Operations to on-site client locations, where **LPS**' signers and notaries unscrupulously mass-

28 **MOTION TO STAY AND DISMISS BASED ON FRAUD ON THE COURT**

1
2 Produced the same type of deficient documents generated at **DocX and LPS Minnesota**. *See*
3 **Reuters at 2**. Thus, in substance nothing had changed at **LPS**.
4

5 **6. The Company's Business Model Led to Security** 6 **Breaches and Significant Errors**

7 **a. Employees Were Pressured to Share Passwords**

8 99. addition to the above practices, the volume of work and the Company's emphasis on
9 speed

10 Over accuracy led to security breaches and significant errors in mortgage documents. Indeed,
11 CW 15 35 explained that **LPS** was "slammed," which forced the Company to overlook certain
12 Protocols And issues. For example, one such practice concerned their use of bank identification
13 Numbers. According to this former employee, **LPS'** bank clients would give one person access
14 To their System to retrieve documents, but internally that person's access would be used by
15 Multiple Personnel to expedite the work. As CW15 explained, this was a potential security
16 Breach and Inappropriate, since the bank thought that only the person to whom they had given
17 The ID Number was accessing the system. This practice of "sharing ID's" was particularly
18 Prevalent when doing work for **Wells Fargo and Washington Mutual**. Password sharing was
19 Also Confirmed by Adrian G. Lofton ("Lofton"), a former employee at the Company's
20 Jacksonville, Florida headquarters, who detailed in his certification how cost-cutting measures at
21 **LPS** led to an abuse of basic security protocols, allowing employees to access mortgage records
22 ~~Of borrowers and alter them by changing~~
23

24

35 The former Sales Reporting Supervisor ("CW15") was employed with **LPS** from
25 May 2007 through September 2010 and reported to Leo Stanfield and Steven Rogers.
26 During his employment, he was tasked at one point with "supervising **DocX**."
27

28 **MOTION TO STAY AND DISMISS BASED ON FRAUD ON THE COURT**

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2
3 Entries, reversing transactions, adding transactions, and moving funds in and out of suspense
4 Accounts. 36 See Lofton Cert. at ¶¶109-111. In so doing, associates were violating the
5 Company's computer security rules and the rules of each mortgage bank servicer. *Id.* at
6 ¶125.
7

8 100. CW16 also confirmed that **LPS**' employees engaged in password sharing.
9 According

10 To this former employee, banks issued user names and passwords for specific LPS
11 Employees. For example, **Option One** and **HSBC** provided only a limited number of Passwords.
12 Only those employees were supposed to use the passwords so that the banks could track who
13 Was accessing their system and records, and potentially editing records. The Banks did not want
14 People sharing passwords so they could track who was making changes In their systems and who
15 Was doing what in case there were errors that had to be resolved later. Although password
16 Sharing was rampant, "you were forbidden to ever tell the banks" It was happening.
17

18 101. As new employees could not get user names or passwords for a month or two
19 because the

20 Banks were slow; they had to use other people's passwords to work on files. Managers and
21 Supervisors all encouraged and pressured employees to share passwords, including Assistant
22 Vice President Eric Tate. "Everybody in the whole department was guilty of it." CW 16
23 Explained that bankruptcy, attorney management, research, and anyone
24

25 36 See **Certification of Adrian G. Lofton** ("Lofton Cert."), dated March 24, 2011, *In re*
26 *Residential Mortg. Foreclosure Pleading & Document Irregularities*, No. F-059553-10 (N.J.
27 Super. Ct., Gen. Equity Part), attached as **Exhibit K**. Lofton worked with **Fidelity National**
Foreclosure Solutions, Inc., a division of **Fidelity National Default Solutions** (the predecessor

28 **MOTION TO STAY AND DISMISS BASED ON FRAUD ON THE COURT**

1 To **LPS**) in Jacksonville from April 2006 through October 2007. Lofton Cert. at ¶¶68-71.

2 That needed access would use other people's passwords. Password sharing was widespread

3
4 And constant. CW 16 refused to share his passwords with other employees and "got in
5 Trouble for it." His Supervisor told his team members that they would all have to work
6 Harder because CW 16 refused to use their passwords so he could not work on certain files or
7 For certain lenders.
8

9
10 102. Moreover, CW17,³⁷ who worked with a variety of **LPS lender** clients including
11 **American Home and Saxon**, confirmed that banks attempted to track who was accessing their
12 Internal systems and changing records by limiting access to certain preapproved **LPS** employees
13 Who were granted specific user names and passwords However, if CW 17 did not have a pass
14 Code for a particular lender, he would "borrow" his co-workers' pass codes. CW 17 explained
15 That he "frequently used other people's passwords" and that he used them "nightly." CW 17
16 Explained that there was too much work to be done for only the authorized **LPS** employees to
17 Be able to do it all. **LPS supervisors** had higher level pass codes giving them increased access
18 Within the lenders' internal systems. CW 17 and his co-
19
20

21 ³⁷ The Assistant Operations Support Specialist ("CW 17") was employed with **LPS** part time
22 On the night shift from February 2009 through May 2010. CW 17 was part of the
23

24 Default Solutions Group and worked on bankruptcy files. This former employee worked on
25 A team of four employees and a supervisor under Operations Support Manager Katy
26 Soderberg. In this capacity, CW17 initially reviewed court documents and checked
27 Documents. CW 17 reviewed lender screens at Soderberg's direction and had to double check
28 Dates, data and make corrections if the **LPS system** was wrong, which it frequently was. At
Approximately the start of 2010, most of CW17's nightly tasks involved working on

MOTION TO STAY AND DISMISS BASED ON FRAUD ON THE COURT

1 Bankruptcy ledgers to make sure payments from the borrower were "accounted for and
2 Balanced."

3 Workers would use their supervisors' password "to do stuff because [they had] more
4 Authority and access."

5 **b. LPS Put Intense Pressure on Employees to Do**
6 **Work Quickly, Rather Than Accurately**

7 103. The Company applied immense pressure to complete large volumes of work as
8 quickly as

9 Possible, no matter how poor the quality. Indeed, CW16 explained that there was "immense
10 Pressure to meet volume goals." LPS demanded "mandatory overtime" so that employees could
11 Process all the loan files that needed attention. CW16 explained that there were so many orders
12 That needed to be reviewed and actions that LPS employees had to take in loan files in order for
13 Attorneys to be able to file documents. There was a huge volume of ledgers 38 that had to be
14 Created and problems in loan files that had to be researched and unraveled by CW 16 and his
15 Colleagues. These problems included, among others, missing payments, misapplied payments
16 From other loan files, and payments that should have been attributed to other loans.

17
18 104. CW16 explained that while the pressure to get through a huge volume of loans
19 and to get his

20 Team members to meet their goals from 2006 to 2008 caused him to have a nervous breakdown,
21 Upon returning to LPS in 2009, "the pressure was worse." There was

22
23 38 According to CW16, ledgers were required by courts as part of the bankruptcy

24
25 **Emergency Original Petition for Wrongful Foreclosure**

26 Adjudication process. Ledgers showed all the payments the borrowers had made for 12 or 24
27 Months or since the filing of bankruptcy. The ledgers also showed how the payments were

28 **MOTION TO STAY AND DISMISS BASED ON FRAUD ON THE COURT**

1 Applied towards principal and interest. The requirements for what had to be included in a
2 Ledger varied by court district. CW 16 also checked origination paperwork to confirm that
3 ARM details were accurate and to answer questions posed by lenders or attorneys.

4 New management and the new supervisor would grab people from other departments
5 With no Training or background to do thirty issues a day to address the huge volume the LPS
6 Clients Demanded. Indeed, from 2006 to 2008, CW16 typically worked on 25 files per day but
7 In 2009 and 2010, he worked on 50 files per day. CW 16 noted that he did not become
8 Significantly more efficient, rather management just ramped up the pressure to go
9 Faster.

10 105. The intense pressure to speed through files was echoed by CW 17, who stated that
11 there was

12 Tremendous pressure to do everything as quickly as possible. CW 17 recounted that
13 Soderberg

14 Told him and his co-workers to "get it done and get it done as quickly as you can. I have to meet
15 Numbers." It "was frustrating because you'd come across stuff" and there was "no indication
16 How to proceed." LPS "wanted us to do hundreds and hundreds "every night. There was no
17 Incentive compensation plan for the night shift, but a frequent refrain was that "other
18 People want your job; we'll just let you go if you don't keep up."
19

20 106. LPS also emphasized speed by limiting the amount of time spent on a file. CW
21 16 stated that

22 They were "only allowed to look at an issue for two minutes, or five minutes tops." His
23 Supervisors and managers did not want CW 16 and his fellow employees to spend time
24 On any Loan unless it was incredibly complex. However, they frequently could not finish it
25

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27
28 **MOTION TO STAY AND DISMISS BASED ON FRAUD ON THE COURT**

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Within Five Minutes. According to CW 16 "a lot of people didn't understand the financial side And Just Winged it."

107. Lofton also confirmed how the Company's focus on speed over accuracy caused employees

To cut corners. He stated that during "crunch" times, when a great volume of work came In and Departments were understaffed, employees would cut corners. *See Exhibit K, at ¶¶112-113.* They were encouraged to do so by supervisors who would tell them "to do whatever Was needed to get the job done." *Id. at ¶¶113-114.* Moreover, as Thomas testified, the Managers were constantly "rushing stuff out the door." *See Thomas Dep. at 52-53.* However, If mistakes were made, the employees would take the fall for it. *Id.* CW2 also confirmed that at LPS, "it was

b. Files Are Rife with Error

108. Company's automated system, which automatically generated referrals to attorneys and,

Thus, Fees to LPS caused a slew of problems in the loan files. According to CW 16, there were Serious problems in the automation process that led to "phantom referrals," when the LPS MSP Software system generated "processes" or attorney referrals that did not really exist. CW16 Stated that "Motions for Relief were generated when they shouldn't be or Agreed Order Processes generated when didn't need to be." When these phantom referrals were generated in Error, it led attorneys to work on processes and file documents with courts alleging borrower Failures or defaults that was not accurate. He stated: "I remember seeing it all the time." CW 16 Explained that two of 10 files had referrals that should not be there. While attorneys who Were Honest would review the file and realize there was not sufficient information to justify the

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2 **Emergency Original Petition for Wrongful Foreclosure**

3 Referral, many other attorneys who were not honest or who had organizations with a lot of low

4 Level employees handling the intake "would just file it even though created by error."

5 CW16 Noted that the David J. Stern law firm would make fees wherever they could. If LPS

6 Questioned them as to why they filed a process that was based on an error, the attorney would

7 Simply blame LPS and ask why LPS created the referral incorrectly. The phantom referral

8 Problems continued Throughout CW16's time at LPS and were a bigger problem as the overall

9 Volume of work Increased.

10
11 109. In addition to the phantom referrals, there were a slew of other major problems in
12 LPS' files.

13 According to CW16, on top of the 20% of files with phantom referrals, approximately another

14 35% of files had some problems in them. Those problems varied, and included among others,

15 An ARM that had improperly adjusted up, 39 a failure to properly account for a borrower's

16 Principal and interest payments and a failure to properly attribute payments between

17 Pre-petition and post-petition that led the banks to try to collect pre-petition obligations they

18 We're not permitted to pursue.

19
20 110. CW 16 recounted that, in 2009 and 2010, he was part of a 10-person team, each
21 of whom

22 Worked on as many as 50 files per day. Approximately 55 percent of the files had problems,

23 Which meant that there were a large number of files with errors? However, as they could only

24 Spend five minutes on most files that left no time to fix the problems.

25
26 111. The errors in the files also resulted from LPS' inability to follow procedures. As
27 CW 16

28 **MOTION TO STAY AND DISMISS BASED ON FRAUD ON THE COURT**

1 Noted, LPS had a variety of different procedures for each of the different lenders it served. Each
2 Lender has different procedures for different functions. It was very complicated, especially for
3 New or inexperienced **LPS** employees. **LPS** hired on temps with no mortgage experience.
4 However, according to CW16, LPS was "not diligent about following procedures," as a big
5 Source of **LPS'** income is banks giving LPS loans so LPS can generate revenue from
6 Attorney Referrals. **LPS** was providing lip service to banks about having procedures in place "to
7 Appease The banks." CW 16 stated that "the longer you work

10 39 According to CW 16, in bankruptcy, banks are not permitted to raise interest rates on
11 Borrowers, even if the borrower had an ARM loan with an interest rate that would have
12 Otherwise adjusted up.

13 There the more you know what you are doing is not right ." **LPS** was playing with
14 People are Life and houses. Mistakes in the files could cause people to lose their homes. As
15 CW16 Explained, it was easy for **LPS employees** to feel like they were just playing video
16 Games Looking at computer screens and lose sight of the fact that the drive for speed over
17 Accuracy Have consequences in real people's lives.

18 112. Even though LPS had a quality control department, it did not conduct an accurate
19 or

20 Thorough assessment. According to CW16, the Quality Control department would randomly
21 Pick twenty files from the previous month and review them for problems. However, in actuality,
22 They often just reviewed them for how well the employee described the issue, rather than
23 Whether the resolution reached or ledger prepared was actually accurate. As each employee
24 Touched thousands of files per month, a sample of 20 loans was a poor predictor of quality. Even
25 If Quality Control identified problems with those twenty files, they only requested that the
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28 **MOTION TO STAY AND DISMISS BASED ON FRAUD ON THE COURT**

1 Problems be resolved for those files. It did not prompt a bigger sampling to see if that employee
2 Had more problems or errors in their files that hadn't been reviewed by Quality Control.
3

4
5 **d. LPS Rewards Employees for Speed but Does Not**
6 **Penalize Them for Mistakes**

7 113. According to CW2, LPS had an incentive compensation plan, known as ICP,
8 which
9 Processed By employees. It "didn't matter if you had a harder client. If they were kicking out
10 More loans, Right or not, you were graded down if you didn't keep up. People could kick out
11 Totally Fraudulent audits, but as long as they were fast, they were rewarded. This was going on
12 The Whole time." He stated that his supervisors "Jack [Junier] and Dory [Goebel] absolutely
13 Knew About it." "The policy was just doing it as fast as you can." ICP bonuses amounted to a
14 Couple Hundred dollars per month in compensation that you lost if you were found to be slower
15 Than Your co-workers. Lofton also confirmed that team associates received bonuses based on
16 Speed In resolving issues and that the Company's bonus system placed a premium on
17 Resolving Issues without raising them to supervisory personnel. Lofton Cert. at ¶¶105-106, 108.

18
19 114. CW 16 further elaborated on the Company's bonus system. According to this
20 former
21 Employee, LPS' incentive compensation plan was based entirely on speed and the number of
22 Issues Addressed each month. Under the ICP, employees were judged against other employees.
23 LPS Expected everyone to resolve thirty issues a day, and many of the new employees had
24 No training or experience with mortgages. If employees did not meet the volume goals they
25 Would receive a "Verbal performance review" and lose their incentive for the month. After
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1 Subsequent failures to meet their goals, they received written reviews and could lose additional
2 Incentives. CW16 Explained that employees could make money by rushing through files and
3 Could lose their job for failing to meet volume targets. However, *there were no penalties* for
4
5 Being wrong, just for being slow.

6 115. According to CW16, under the bonus system, working through a payment issue
7 was
8 Worth five points and escrow problems were worth six points. If you hit 1000 points in a month,
9 That translated into a bonus of \$75. At 2000 points, the bonus was \$200. At 3000 points, the
10 Bonus was \$275. Every five issues after that were worth \$1.00. "Management pushed it. They
11 Pushed it, they pushed it, and they pushed it."

13 **The Company Concealed Errors at Any Cost**

14 116. Not only did the Company reward speed over accuracy, it also required
15 employees to
16 Hide **LPS'** errors no matter what the ramifications. According to CW2, who was responsible for
17 Auditing bankruptcy files and determining whether LPS had done its job correctly or incorrectly,
18 The attitude **at LPS** was that **LPS** "was not paid to audit files in bankruptcy." This Was the
19 Excuse used internally to justify performing only a minimal effort and ignoring Conflicting
20 Information or errors in files. It was repeated to him whenever he brought problems to the
21 Attention of his manager, and sought permission to pursue a solution or notify the Servicer
22 Client. CW2 explained that the clients believed that because **LPS** agreed to perform a Service for
23 Them, it was going to do a competent job. However, it was known internally that **LPS**
24 Lacked the Ability and resources to audit the loans. Indeed, CW 16 explained that banks needed
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28 **MOTION TO STAY AND DISMISS BASED ON FRAUD ON THE COURT**

1 To rely on **LPS** to help them because of the weaknesses in their systems. But **LPS** was not in a
2 Position to do things the right way.

3 117. Moreover, CW2 explained that when **LPS** did an audit and discovered that **LPS**
4 Had

5 Made a mistake that led an **LPS** servicer client to present false information to a Court, **LPS**

6 118. Would not let its employees "point the finger at **LPS**." Indeed, CW2 explained
7 that there

8 Was a known and openly discussed policy during his entire employment at **LPS** of "Not Fully
9 Disclosing what is known, what is being done and what they are finding." These Details were not
10 Disclosed to clients, borrowers or the courts. This policy was openly discussed during
11 Department meetings.

12 119. As fixing mistakes or identifying problems did not bring revenue to **LPS**, its
13 employees

14 Were encouraged to ignore them and move on. Indeed, while CW2 repeatedly told his
15 Supervisors about problems, he could not get them to correct the mistakes or come clean about
16 Problems to their clients. While he would make recommendations based on what he saw, he was
17 Told by his manager that "our client agreement doesn't call for recommendations, don't
18 Do it." CW2 stated that "there are times when the servicers don't know all the local rules or
19 Procedures and it was our job to inform them, but the policy was not to tell [the servicers]
20 Anything "that would potentially upset them.

21 120. CW17 confirmed the **LPS** policy of ignoring mistakes or sweeping them under the
22 rug.

23 According to CW 17, the emphasis was always on speed over quality. When CW17 was
24 Working on a ledger project, he regularly noticed other problems in the file. It could be
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28 **MOTION TO STAY AND DISMISS BASED ON FRAUD ON THE COURT**

1 Something simple "and you can change it right then, but you'd get in trouble if you Fixed it"
2 Because technically "it was not your job." LPS ended up wasting time and Leaving Problems to
3 Fester even though the one person who first saw the problem could have easily fixed it.
4 Moreover, CW17 saw "files again and again" and often the problem was still not fixed. The
5 Problems he frequently saw were "payment amounts being wrong, dates and Times of when
6 Foreclosures or bankruptcy should be happening didn't match. Ledgers [had] Payments that was
7 Totally weird and wrong." According to CW17, the purpose of doing their work "was to fix
8 Problems" but CW 17 and his colleagues were "told not to fix" some of the problems in the
9 Files. Indeed, when CW17 and his colleagues identified problems in the files they were told by
10 Their supervisors "to go do your job." It was not clear if the Problems were ever going to be
11 Fixed by someone else.
12

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15 121. CW2 explained that the end result of these practices is a "three-year time Bomb"
16 waiting
17 To Explode. Indeed, he explained that problems existed in many LPS loans, and he "knows there
18 Are mistakes now" that are still being concealed from clients and courts. He stated that: "out of
19 100 files, I guarantee 78 are incorrect." The errors ranged from Adversary proceeding violations,
20 Incorrect agreed orders, missing payments not Accounted For, and escrow issues such as clients
21 Escrowing on non-escrow loans. As a result of these Errors, CW2 explained that LPS was
22 "Messing with people's homes." Indeed, CW2 explained that "people were doing everything
23 They are legally required to do but losing their Homes anyway because of errors." When this
24 Former employee explained to his supervisors That LPS' errors were putting borrowers at risk
25 Of incorrectly losing their homes, the Response was "[d]on't worry about that, it is not our
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Department.” 40

D. LPS’ Illicit Practices Caused Default Services Revenues to Rise

122. Through the Company’s hard-to-refuse business model and illicit practices as detailed

Above, Defendants were successful in cornering the market for default management services. In

Such a way, Defendants were able to increase the Company’s revenues to unprecedented levels

In an otherwise terrible economy. Indeed, the Company’s default management services

Revenues More than doubled and grew to represent nearly 50% of the Company’s total revenue.

This is illustrated in the table below, which contains **LPS’** total

40 CW2 eventually became so concerned about what he saw as illegal conduct and Actions that effectively defrauded borrowers and **LPS servicer** clients that he wrote a Letter of Resignation and submitted it to his manager, Junier. In the letter, CW2 briefly explained that He had repeatedly brought what he believed to be ethical and legal problems To Junier, and That Junier did not take any actions in response. As a result, CW2 resigned because he did not want to go to jail and would no longer participate in actions that mislead courts.

Annual revenues and total annual revenues for the Default Management Services

Business Segment for the years 2007 through 2010:

Year	Default Services Revenue	Total Revenues	Percentage of Total Revenue
2007	\$473,000,000.00	\$1,638,600,000.00	29%
2008	\$851,800,000.00	\$1,837,600,000.00	46%
2009	\$1,137,300,000.00	\$2,370,500,000.00	48%
2010	\$1,060,600,000.00	\$2,456,300,000.00	43%

123. Throughout the , Defendants touted these record revenues and the Company’s significant

Market share in the default industry, while deliberately failing to disclose the illicit practices

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1 That drove these achievements and that its business model was unsustainable. In such a
2 Way, Defendants artificially inflated the Company's stock price. However, Defendants'
3 Scheme was hanging by a thread and would eventually unravel. And, as detailed below, when
4 The market Began to learn bits and pieces surrounding the Company's illicit business practices,
5 Defendants continued their fraud and maintained the artificial inflation in LPS' stock price
6 Through outright Lies and false assurances to investors.

8 **V. SCIENTER ALLEGATIONS**

9 124. The Individual Defendants acted with scienter in that they knew or recklessly
10 Disregarded that the public documents and statements issued or disseminated in the name
11 Of the Company Were materially false and misleading; and knowingly or severely recklessly
12 Substantially Participated or acquiesced in the issuance or dissemination of such statements or
13 Documents as Primary violators of the federal securities laws.

15 125. Indeed, the Individual Defendants, by virtue of their receipt of information
16 reflecting the
17 True facts regarding **LPS** and its core business practices, their control over and/or receipt of
18 **LPS'** allegedly materially misleading misstatements and/or their associations with the Company
19 That made them privy to confidential proprietary information concerning **LPS**, Were Active and
20 Culpable participants in the fraudulent scheme alleged herein. The Individual Defendants knew
21 And/or severely recklessly disregarded the falsity and misleading nature of the information,
22 Which they caused to be disseminated to the investing public. The ongoing Fraud as described
23 Herein could not have been perpetrated over a substantial period of time, as Has occurred,
24 Without the knowledge and/or severe recklessness and complicity of the Personnel at the highest
25 Level of the Company, including the Individual Defendants.

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**A. Default Management Services Was a Core
Operation of the Company**

126. Defendants LPS' default management services were a core operation of the Company.

As Detailed in the table in Section IV above, default management services became an Increasingly significant percentage of the Company's revenues, nearing 50% in 2009. Moreover, Throughout this day, the Individual Defendants repeatedly touted the success of its **default Management Services business** s and the impact that the success of this business segment had On Its revenues. *See, e.g.* ¶¶122, 132, 135, 142, 166, and 186. As the most senior executive Officers of **LPS**, the Individual Defendants knew, or at a minimum were severely reckless in Not knowing, of facts Critical to this core operation of the Company on which they repeatedly Made Statements.

**B. Defendants Were Aware of the Illicit
Practices at DocX**

127. Defendants were intimately knowledgeable of the practices at **DocX**. Indeed, as As

Recounted by CW10, after the acquisition of **DocX**, **LPS** executives began to visit the **DocX Offices**. This former employee stated that after **LPS** spun-off from **Fidelity**, **CEO Carbiener** Would visit the different business units regularly, including **DocX**. **CEO Carbiener** also came to **DocX** with **COO Chan**. Moreover, CW 10 confirmed that Brown regularly reported to **LPS** About **how DocX's** business unit was faring. Brown would Travel to corporate offices in Jacksonville to report on the status of the business unit and also frequently had calls with the Higher-ups in Jacksonville.

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1 128. Defendants also repeatedly acknowledged the problematic business practices at

2 **DocX**

3 And their internal investigation of this entity. For example, Defendants made the following

4 Admissions:

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- 9 • Recently, during an internal review of the business processes used by
10 our document solutions subsidiary, we identified a business process
11 that caused an error in the notarization of certain documents, some of
12 which were used in foreclosure proceedings in various jurisdictions
13 around the country. ¶¶206, 223.
 - 14 • For those on the call that haven't really gone through that disclosure,
15 the issue really related to one of our small subsidiaries that did
16 limited document prep for a couple of clients, not extensive
17 processes. The financial results of that sub, it's hard to say they are
18 even material. They're very, very small. And the services that they
19 provide don't in any way tie into anything else we do from our core
20 default processing. ¶218.
 - 21 • Now, as part of our enterprise risk management process, we were
22 reviewing the business processes of that subsidiary late last year, and
23 we discovered that there was a problem with one of the processes that
24 caused an error in the notarization process. ¶218.

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28 **MOTION TO STAY AND DISMISS BASED ON FRAUD ON THE COURT**

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6 **C. Defendants knew of the Company's Illicit**
7 **Practices from the Constant Media Scrutiny,**
8 **Investigations, And Litigation**

9 129. Moreover, Defendants knew or should have known of the Company's illicit
10 practices

11 From the constant media scrutiny, various government investigations, and litigation that
12 Addressed these practices throughout the Class Period. Indeed, the impropriety of **LPS' Practices**
13 Has also been the subject of various lawsuits that Defendants have defended since 2008. For
14 Example, in *In re Taylor*, No. 07-15385 (Bankr. E.D. Pa. Sept. 16, 2007), the United States
15 Trustee (a component of the United States Department of Justice) used the case as a "vehicle of
16 Its scrutiny of **LPS/Fidelity**" in connection with a national investigation of LPS' conduct in
17 Bankruptcy cases. *See Exhibit D*. Indeed, on August 25, 2008, the United States Trustee filed a
18 Motion for examination of **LPS**, stating that questions had arisen Regarding **LPS'** conduct in the
19 *Taylor* bankruptcy proceeding, including LPS' document Preparation and "interference with
20 Communications between counsel and clients. . . ." *See Taylor*, Dkt. No. 77. As detailed above,
21 The presiding Judge in this case – Judge Sigmund – Undertook a review of the LPS system and
22 Found numerous ethical concerns with the barriers To the attorney-client relationship raised by
23 **LPS'** business model. Likewise, in *Wilson*, the United States Trustee participated in the case
24 And filed a motion for sanctions against **LPS** Because it had submitted a false and misleading
25 Affidavit regarding the debtors 'supposed Failure to pay monthly installments on the mortgage
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1 Note and on grounds that the testimony Of the **LPS** employee who executed this affidavit was
2
3 Materially misleading. *See Exhibit E* .On April 6, 2011, the court ruled in favor of the motion,
4 Calling the affidavit a “sham” and Granting sanctions against **LPS** for “fraud perpetrated against
5 The Court, Debtors and trustee.”

6 **130. Similarly, Defendants also defended against the following**
7 **litigation**

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10 **Emergency Original Petition for Wrongful Foreclosure**
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7 131. addition, as detailed throughout the Complaint, the Company was subject to
8 inquiries,

9 Probes or investigations from the following regulatory bodies and government entities

10 Throughout the or investigations;
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18 132. Defendants readily admitted to cooperating with these investigations and
19 providing

20 Relevant information to the authorities:
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18 133. As a result of the intense media scrutiny surrounding the Company during the
19 Investigations Period and Defendants' efforts in responding to the various inquiries into the
20 Company's practices and defending against litigation with respect to such practices, Defendants
21 Were keenly aware throughout the investigations Period of the Company's improper
22 Relationships with network attorneys, improper documentation execution and notarization
23 Practices, robo-signing and surrogate signing, the significant error rate in LPS services, and the
24 Company's deliberate concealment of known errors.
25

26 **VI. DEFENDANTS' FALSE AND MISLEADING**
27 **STATEMENTS**

28 **MOTION TO STAY AND DISMISS BASED ON FRAUD ON THE COURT**

1 134. The Defendants begins on August 6, 2008, the first trading day after the Company
2 Reported its second quarter 2008 financial results and held a conference call with analysts after
3 The market's close on August 5, 2008. **Second Quarter 2008 Earnings Release and**

4 **Conference Call**

5 135. The August 5, 2008 press release entitled, "Lender Processing Services, Inc.
6 Reports
7 Second Quarter Earnings," which was concurrently filed with the SEC on Form 8-K,
8 Reported "consolidated and combined revenues of \$460.4 million for second quarter 2008, an
9 Increase of 8.3% compared to second quarter 2007, and net earnings of \$63.5 million
10 Compared to \$60.5 million in the prior year quarter." Default Services enjoyed "revenues of
11 \$197.2 million which grew 89.7% over second quarter 2007 *mainly due to strong market*
12 *Growth and our ability to continue to gain market share.'* Foley declared, "Second quarter
13 Results were very strong despite difficult market conditions and overall weakness in the
14
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16 136. Economy. *LPS, with its solid market position and unique capabilities, remains*
17 *well*
18 *Positioned As a stand-alone public company to grow in the second half of 2008 and beyond.'*
19 CEO Carbiener added, "Overall, earnings were in line with our expectations. *Strong results in*
20 *Our Default Services business more than offset a decline in our Loan Facilitation business.'*
21 He then concluded, "We're off to a strong start as an independent public company and *while the*
22 *Broader economic environment and the real estate market in particular, remain challenging,*
23 *LPS with its unique mix of businesses is well -positioned for the future.'*
24

25 137. Also, on August 5, 2008, the Company hosted a conference call with various
26 Securities
27

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1 Analysts to discuss LPS' second quarter 2008 financial results. CEO Carbiener and CFO Chan
2 Participated in this call. On this call, CEO Carbiener started by highlighting
3 The Company's continued revenue growth due to its default services business and strong
4 Positioning in that business segment:
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138. CFO Chan echoed this sentiment:

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1 When asked specifically about mortgage defaults and foreclosure activity
2 moving

3 Forward, CEO Carbiener and COO Chan continued to tout the Company's default services
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5 Revenue growth rate and growing market share:

6 ***Julio Quinteros – Goldman Sachs – Analyst***
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14 139. The market reacted favorably to Defendants' statements regarding the Company's
15 second

16 Quarter 2008 financial results and positive outlook. For example, on August 6, 2008, Fox-Pitt
17 Kelton Cochran Caronia Waller highlighted how "LPS' business model is designed to benefit in
18 all cycles of the mortgage market," even noting that "[t]he increase in foreclosures in the near
19 term has been successful in supporting growth at LPS."
20

21 140. As a result of Defendants' misrepresentations, and resulting analyst affirmation,
22 the
23 Company's stock price climbed from a close of \$32.21 per share on August 4, 2008 to an
24 artificially inflated price of \$34.73 on August 8, 2008, on unusually heavy trading volume.
25

26 **Second Quarter 2008 Form 10-Q**

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28 **MOTION TO STAY AND DISMISS BASED ON FRAUD ON THE COURT**

1 141. On August 13, 2008, the Company filed its quarterly report for the second quarter
2 of
3 2008 on Form 10-Q with the SEC, for the period ending June 30, 2008. The second quarter 2008

4
5 Form 10-Q reaffirmed the financial results announced in the August 5, 2008
6 press release and

7 Conference call as set forth above. Further, the second quarter 2008 Form 10-Q contained the
8 Following statements:

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23 **142.** LPS' default management services was described to include "foreclosure
24 management

25 **143.** Services, including *access to a nationwide network of independent*
26 *attorneys,*

27 Document preparation and recording and other services." Moreover, CEO Carbiener and COO

28 **MOTION TO STAY AND DISMISS BASED ON FRAUD ON THE COURT**

1 Chan signed Sarbanes-Oxley ("SOX") certifications that stated:
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3 1. I have reviewed this quarterly report on Form 10-Q of Lender
4 Processing Services, Inc.;

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144. Defendants also made the following statements about the Company's disclosure
Controls and procedures:

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8 145. The statements made in the 2008 second quarter Form 10-Q, the Company's
9 August 5,

10 2008 press release and earnings conference call set forth above, which touted among other
11 Things, the Company's revenue growth and growth in default services, were materially false and
12 Misleading when made or omitted material facts to make such statements not false or misleading
13

14 146. In addition, they were false and misleading or omitted material facts to make such
15 Statements not false and misleading because: (a) throughout the Class Period, the Company's
16 Revenues were the product of an improper business model and illicit practices and were thus
17 Unsustainable (*see, e.g.*, ¶¶35-103); (b) the Company's business model provided free default
18 Management services to clients but generated revenues through fees charged to attorneys for
19 Referrals and the completion of legal work (*see, e.g.*, ¶¶35-44); (c) the Company's network of
20 Attorneys were not independent because they were selected by LPS, were required to follow
21 Specific protocols and timeframes imposed by LPS, were strongly discouraged by LPS from
22 Communicating with their clients, and were subject to APR (*see, e.g.*, ¶¶45-55); (d) in order to
24 Push through the volume of work created by the Company's business model, LPS employed
25 Myriad illicit business practices at its various locations, including the fabrication of documents,
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28 **MOTION TO STAY AND DISMISS BASED ON FRAUD ON THE COURT**

1 Robo-signing, surrogate signing, improper notarization, and the violation of security protocols
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3 (*See, e.g.*, ¶¶56-103); (e) the Company created a culture which valued speed over accuracy and
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5 Led to significant errors in the default services it provided (*see, e.g.*, ¶¶82-103); (f) such errors
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7 Were knowingly concealed from clients, attorneys, and courts (*see, e.g.*, ¶¶99-103); (g) as a
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9 Result of these illicit practices, Defendants caused significant numbers of deficient, erroneous,
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11 And otherwise fraudulent documents to be filed with county records offices and courts
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13 Throughout the country (*see, e.g.*, ¶¶57-62, 76-77, 91, 100); (h) as a result of Defendants'
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15 Schemes, LPS' revenues and other financial metrics were artificially inflated (*see, e.g.*, ¶¶104-
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17 105); (i) LPS' Forms 10-Q and 10-K failed to disclose known trends, demands, Commitments,
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19 Events and uncertainties that was reasonably likely to have a material effect on The Company's
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21 Product sales, revenues, net income, accounts receivable and gross profit Margins as required
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23 By-Item 303 of Regulation S-K; and (j) for the reasons detailed herein, the SOX certifications
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25 Signed by Defendants and incorporated in the Company's Forms 10-Q and 10-K were false.

26 **Prospectus for Exchange of Notes**

27 147. September 10, 2008, the Company filed with the SEC a prospectus for the
28 exchange of

Certain outstanding senior notes. With regard to LPS' business segments and their respective
Financial successes, the prospectus stated in pertinent part:

**Our default management services offer a full spectrum of outsourced services
in connection with defaulted loans. These services include, among others:**

- **foreclosure services, including *access to a nationwide network of independent attorneys*, document preparation and recording and other services;**

MOTION TO STAY AND DISMISS BASED ON FRAUD ON THE COURT

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MOTION TO STAY AND DISMISS BASED ON FRAUD ON THE COURT

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MOTION TO STAY AND DISMISS BASED ON FRAUD ON THE COURT

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2 **recording services, including mortgage assignment and release preparation,**
3 **and due diligence and research services. We also provide various other title**
4 **services in connection with the foreclosure process.**

5 148. As a result of Defendants' misrepresentations, the Company's stock price rose
6 from a

7 Close of \$34.26 per share on September 9, 2008 to an artificially inflated price of \$35.93 on
8 September 10, 2008, on unusually heavy trading volume.

9 149. For the reasons stated above in the Substantive Allegations, and as further
10 detailed

11 Herein, the statements contained in the Company's prospectus issued on September 10, 2008,
12 Which touted among other things, the company's network of "independent" attorneys, the
13 Quality of the default management services it offered, the increase in default services revenue
14 And market share gains, were materially false and misleading when made or omitted to make
15 Such statements not false and misleading for the reasons stated above in ¶131.

16 **Third Quarter 2008 Earnings Release and Conference Call**
17

18 150. On October 29, 2008, LPS announced its third quarter 2008 financials in a press
19 release

20 Entitled "Lender Processing Services, Inc. Reports Strong Third Quarter Earnings," and filed
21 The same with the SEC on Form 8-K. The Company reported "consolidated revenues of \$472.7
22 Million for third quarter 2008, an increase of 11.1 % compared to third quarter 2007, and net
23 Earnings of \$51.3 million or 54 cents per share. "The press release stated in pertinent part:
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7 **Emergency Original Petition for Wrongful Foreclosure**
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13 **151.** Moreover, in this press release, Foley boasted, “ *LPS had strong results in its*
14 *first*
15 *Quarter as a stand-alone company* despite challenging market conditions and a difficult
16 Macro-economic environment affecting some of its businesses. With its strong market
17 Position and unique capabilities, LPS remains well-positioned to grow in the fourth quarter
18 And beyond.”

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20 **152.** CEO- Carbiener made the following statements:
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10 **153.** Also on October 29, 2008, Defendants hosted an earnings conference call with
11 analysts

12 To discuss the Company's third-quarter 2008 financial results. CEO Carbiener and COO Chan
13 Participated in this call. In his opening remarks, CEO Carbiener reiterated the Company's
14 Financial performance and highlighted:
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154. CFO Chan also stated:

MOTION TO STAY AND DISMISS BASED ON FRAUD ON THE COURT

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2 155. Defendants' prepared remarks, in response to questions from analysts, CEO
3 Carbiener

4 Explained the timing of collections on default revenue streams:
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15 156. The market reacted positively to Defendants' statements regarding the Company's
16 third

17 Quarter 2008 results, and in particular its rosy outlook for growth related to default services. For
18 Example, on October 30, 2008, Fox-Pitt Kelton Cochran Caronia Waller noted, "Default services
19 Revenue increased 97.1 % to \$241.8 million, above our growth estimate of 63.9% to \$201.2
20 Million. Foreclosures continue to hold up in this environment and appear to be offsetting loan
21 Facilitating services."
22

23 **Third Quarter 2008 Form 10-Q**
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25 157. On November 14, 2008, LPS filed its quarterly report for the third quarter of 2008
26 on

27 Form 10-Q with the SEC, for the period ending September 30, 2008. The third quarter 2008
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MOTION TO STAY AND DISMISS BASED ON FRAUD ON THE COURT

1 Form 10-Q reaffirmed the financial results announced in the October 29, 2008 press release

2
3 And conference calls. Further, it contained substantially the same SOX certifications that were
4 Included in the Company's second quarter 2008 10-Q, that were signed by CEO Carbiener and
5 COO Chan. Moreover, the third quarter 2008 10-Q contained the following statements:
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22 **158.** The Company's foreclosure management services, which were offered through its
23 Default management services segment, were described to include "access *to a*
24 *Nationwide network of independent attorneys*, document preparation and recording and
25 Other services."

26 **159.** For the reasons stated in the Substantive Allegations, and as detailed herein, the
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28 **MOTION TO STAY AND DISMISS BASED ON FRAUD ON THE COURT**

1 Statements made in the 2008 third quarter Form 10-Q, the Company's October 29, 2008 press
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3 Release and earnings conference call set forth above, which touted among other things, the
4 Company's strong default services revenue, expanding market share in its default product
5 Lines, and demand for default services, were materially false and misleading when made or
6 Omitted material facts to make such statements not false or misleading for the reasons stated
7 Above in ¶131.
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9 **Fourth Quarter and Fiscal-Year 2008 Earnings Release and Conference Call**
10

11 160. On February 11, 2009, LPS issued a press release entitled "Lender Processing
12 Services,
13 Inc. Reports Strong Fourth Quarter Earnings," which was also filed with the SEC on Form 8-K
14 On the same date. The Company reported "consolidated revenues of \$476.1 million for the
15 Fourth quarter of 2008, an increase of 8.5% compared to the fourth quarter of 2007, and net
16 Earnings of \$54.3 million or 57 cents per share." Additionally, "Full year 2008 revenues of
17 \$1.9 billion were up 10.1 % compared to 2007 and net earnings for full year 2008 were \$230.9
18 Million. Pro forma adjusted net earnings for full year 2008 were \$230.7 million compared to
19 \$221.2 million in 2007." For the Loan Transaction Services segment in particular:
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28 **MOTION TO STAY AND DISMISS BASED ON FRAUD ON THE COURT**

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13 161. Foley declared, "*LPS had a solid fourth quarter* despite continued difficult
14 market

15 Conditions and a tenuous macro-economic environment impacting some of its
16 Businesses. LPS, with its unique capabilities and market leading presence, remains well
17 Positioned to achieve its growth objectives in 2009 and beyond."

18 162. CEO Carbiener continued:
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28 **MOTION TO STAY AND DISMISS BASED ON FRAUD ON THE COURT**

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12 163. Also on this date, the Company held an earnings conference call with various
13 securities

14 Analysts to discuss LPS' fourth quarter 2008 and 2008 fiscal year end financial results.

15 CEO Carbiener and CFO Chan participated in this conference call. During their opening

16 Remarks, CEO Carbiener and CFO Chan both reiterated the Default Services segment's strong

17 Performance and outlook:
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28 **MOTION TO STAY AND DISMISS BASED ON FRAUD ON THE COURT**

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MOTION TO STAY AND DISMISS BASED ON FRAUD ON THE COURT

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15 164. In the question-and-answer session that followed, CFO Chan again highlighted
16 the
17 Market share potential for default services:
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21 165. The market reacted favorably to CEO Carbiener and CFO Chan' statements
22 regarding the
23 Company's Continued financial success. In fact, on February 12, 2009 – the very next day after
24 The earnings Call – Fox-Pitt Kelton Cochran Caronia Waller issued a glowing report upgrading
25 **LPS' stock Rating:**
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28 **MOTION TO STAY AND DISMISS BASED ON FRAUD ON THE COURT**

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2 **Emergency Original Petition for Wrongful Foreclosure**
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12 166. As a result of Defendants' misrepresentations, and resulting analyst affirmation,
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14 Company's stock price rose from a close of \$25.16 per share on February 10, 2009 to an
15 Artificially inflated price of \$27.50 on February 12, 2009, on unusually heavy trading volume.

16 **Fiscal Year 2008 Form 10-K**

17 167. On March 16, 2009, the Company filed its annual report for its fiscal year ended
18 December 31, 2008 on Form 10-K with the SEC. The Form 10-K reaffirmed the
19 Financial results announced in the February 11, 2009 press release and conference call.
20 Further, it contained substantially the same SOX certifications that were included in the
21 Company's second quarter 2008 10-Q that were signed by CEO Carbiener and CFO Chan.
22 Moreover, the Form 10-K provided in pertinent part:
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28 **MOTION TO STAY AND DISMISS BASED ON FRAUD ON THE COURT**

1 [W]e believe that a rising interest rate environment or a weaker economy
2 tends to increase the volume of consumer mortgage defaults, and *thus*
3 *favorably affects our default management operations, in which we service*
4 *residential mortgage loans in default. These factors also increase revenues*
5 *from our Desktop services, as the Desktop application, at present, is*
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MOTION TO STAY AND DISMISS BASED ON FRAUD ON THE COURT

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168. The Company touted its burgeoning default management services
business:

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23 169. As a result of Defendants' misrepresentations, the Company's stock price rose
24 from a
25 Close of \$27.57 per share on March 16, 2009 to an artificially inflated price of \$28.69 on March
26 18, 2009, on unusually heavy trading volume.
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28 **MOTION TO STAY AND DISMISS BASED ON FRAUD ON THE COURT**

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3 170. For the reasons stated in the Substantive Allegations, and as detailed herein, the
4 Statements made in the 2008 Form 10-K, the February 11, 2009 press release and earnings
5 Conference call set forth above, which touted among other things, the Company's growth in
6 Default services revenue and expanding market share, were materially false and misleading
7 When made or omitted material facts to make such statements not false or misleading for the
8 Reasons stated above in ¶131.
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11 **April 16, 2009 Dow Jones Bankruptcy Review Article**

12 171. On April 16, 2009, the *Dow Jones Bankruptcy Review* published an article detailing
13 a
14 Nationwide probe by the Department of Justice into mortgage data processing firms such
15 As LPS, which is quoted in pertinent part below in ¶239. The probe was revealed in an opinion
16 From Bankruptcy Judge Diane Weiss Sigmund, who blasted LPS' system for forcing lawyers to
17 Talk to computers rather than to their clients. Judge Sigmund wrote that while LPS' system "has
18 Many features that make a volume business process more efficient, the users may not abandon
19 Their responsibility for fairness and accuracy to the seduction of electronic communication."
20 "The thoughtless mechanical employment of computer-driven models and communications to
21 Inexpensively traverse the path to foreclosure offends the integrity of our American bankruptcy
22 System." In response, Mr. Kersch stated that the Office of the U.S. Trustee – an arm of
23 The Justice Department – "advised outside counsel for LPS that it is seeking to better
24 Understand LPS' role." She also pointed out that it was the lawyers – not LPS – who were held
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1 Responsible for the problems in the case before Judge Sigmund.

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5 172. For the reasons stated in the Substantive Allegations, and as detailed herein, **LPS'**
6 Statements made in this article through Mr. Kersch were materially false and misleading when
7 Made or omitted material facts to make such statements not false or misleading for the reasons
8 Stated above in ¶131. In addition, they were materially false and misleading when made or
9 Omitted material facts to make such statements not false or misleading because the Justice
10 Department was investigating **LPS' business** practices and Judge Sigmund noted many ethical
11 Problems with the **LPS system** regardless of who was ultimately sanctioned in that
12 Circumstance (*see, e.g., ¶55, Exhibit D*).

13
14 **April 17, 2009 Press Release**

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16 173. The following day, April 17, 2009, the Company issued a press release to clarify
17 the
18 April 16th Dow Jones Bankruptcy Review article. In so doing, the Company completely ignored
19 The inadequacies in its system highlighted by Judge Sigmund:

1 LPS has voluntarily cooperated with the U.S. Trustees Offices with respect to
2 these inquiries. The Honorable Diane Weiss Sigmund issued an opinion on
3 April 16, 2009, with respect to the Niles C. Taylor and Angela J. Taylor
4 proceeding, in which the activities of the participants in the case were

5
6 reviewed. LPS was not a party to this case. LPS, however, voluntarily
7 demonstrated the use of its system for Judge Sigmund and provided all
8 information requested by the U.S. Trustees Offices in connection with this
9 case. In Judge Sigmund's opinion issued at the conclusion of the proceeding,
10 Judge Sigmund stated that LPS was not responsible for any errors in the
11 conduct of the case.

12 174. For the reasons stated in the Substantive Allegations, and as detailed herein, the
13 Statements made in this article regarding the Company's statements regarding the U.S.
14 Trustee's investigation were materially false and misleading when made or omitted material
15 Facts to make such statements not false or misleading for the reasons stated above in ¶131.

16 **First Quarter 2009 Earnings Release and Conference Call**

17 175. On April 29, 2009, the Company announced its first quarter 2009 financials in a
18 press
19 Release entitled "Lender Processing Services, Inc. Reports Strong First Quarter Earnings." The
20 Announcement, which was filed with the SEC on Form 8-K the same day, "reported
21 Consolidated revenues of \$529.8 million for the first quarter of 2009, an increase of 19.4%
22 Compared to the first quarter of 2008, and net earnings of \$50.0 million or 53 cents per share."
23 For Loan Transaction Services in particular, the press release stated:
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28 **MOTION TO STAY AND DISMISS BASED ON FRAUD ON THE COURT**

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10 176. Defendant Kennedy stated, "LPS is off to a strong start in 2009 despite a difficult
11 macro-

12 Economic environment and challenging market conditions in some of its businesses. *LPS, with*
13 *Its market leading presence and unique portfolio of services, remains well positioned to grow*
14 *Profitably in 2009 and beyond."*
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16 177. CEO Carbiener highlighted the success of Default Services:
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14 178. Also, on April 29, 2009, the Company hosted an earnings conference call with
15 analysts to
16 Discuss LPS' first quarter 2009 financial results. CEO Carbiener and CFO Chan participated in
17 The call. During their opening remarks, CEO Carbiener and CFO Chan provided glowing
18 Reviews of LPS' first quarter financial results and Default Services in particular:
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15 179. the ensuing question-and-answer session, CFO Chan provided the following
16 commentary

17 On LPS' foreclosure-related revenues:
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28 **MOTION TO STAY AND DISMISS BASED ON FRAUD ON THE COURT**

Emergency Original Petition for Wrongful Foreclosure

180. In response to CEO Carbiener and CFO Chan ' statements regarding the Company's Financial success, RBC Capital Markets issued a report on April 30, 2009 entitled "A Strong Revenue Beat; Raising Estimates and Target," which noted the following:

First Quarter 2009 Form 10-Q

181. On May 13, 2009, the Company filed its quarterly report for the first quarter of 2009 on Form 10-Q with the SEC, for the period ending March 31, 2009. The first quarter 2009 Form 10-Q reaffirmed the financial results announced in the April 29, 2009 press release and earnings Conference call. Further, it contained substantially the same SOX certifications that were Included in the Company's second quarter 2008 10-Q, that were signed by CEO Carbiener and

MOTION TO STAY AND DISMISS BASED ON FRAUD ON THE COURT

1 CFO Chan. Moreover, the first quarter 2009 10-Q contained the following statements:
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28 **MOTION TO STAY AND DISMISS BASED ON FRAUD ON THE COURT**

1 [Consolidated] [p]rocessing and services revenues increased \$86.2 million, or
2 19.4%, during the first quarter of 2009 when compared to the first quarter of
3 2008. *The increase was primarily driven by growth in our Loan*
4 *Transaction Services segment which resulted from growth in default*

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8 *services*, offset by a decline in loan facilitation services due to ongoing
9 weakness in the housing market and the resulting impact on our loan
10 origination services.
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19 **182.** LPS described its default management services to include “foreclosure
20 management

21 Services, including access to a nationwide network of independent attorneys,
22 Mandatory title Searches, document preparation and recording and other services.”
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24 **183.** Concerning regulatory matters:
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28 **MOTION TO STAY AND DISMISS BASED ON FRAUD ON THE COURT**

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8 184. As a result of Defendants' misrepresentations, the Company's stock price climbed
9 from

10 A Close of \$27.14 per share on May 13, 2009 to an artificially inflated price of \$28.86 on May
11 15, 2009, on unusually heavy trading volume.

12 185. For the reasons stated in the Substantive Allegations, and as detailed herein, the
13 Statements made in the 2009 first quarter Form 10-Q, the April 29, 2009 press release and
14 Earnings conference call set forth above, which touted among other things, the Company's
15 Default services revenue, gain in market share and network of "independent attorneys," were
16 Materially false and misleading when made or omitted material facts to make such statements
17 Not false or misleading for the reasons stated above in ¶131.
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20 **June 9, 2009 New Haven Register Article**

21 186. On June 9, 2009, it was reported in the *New Haven Register* that Connecticut
22 Attorney
23 General Richard Blumenthal had initiated an investigation into the selection of law firms in
24 Foreclosure proceedings and the possibility of forgery and illegal kickbacks. LPS was
25 Reportedly included in this investigation, and in response, Mr. Kersch assured the
26 Public that LPS does not make "attorney selection for its clients or their investors":
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28 **MOTION TO STAY AND DISMISS BASED ON FRAUD ON THE COURT**

1 187. For the reasons stated in the Substantive Allegations, and as detailed herein, the
2 Company's statement made by Mr. Kersch was materially false and misleading when
3 Made or omitted material facts to make such statements not false or misleading for the reasons
4 Stated above in ¶131. In addition, this statement was materially false and misleading when made
5 Or omitted material facts to make such statements not false or misleading because LPS did make
6 Attorney selection for its clients by creating a "network" of attorneys, which for all practical
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10 Purposes, clients were required to use. Moreover, in many circumstances, LPS employees
11 Did specifically select an attorney to handle a client's case. *See, e.g.,* ¶¶45-51.

12 **Second Quarter 2009 Earnings Release and Conference Call**

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14 **188.** On July 29, 2009, the Company issued a press release entitled "**Lender**
15 **Processing**
16 **Services, Inc. Reports Record Second Quarter Earnings**" announcing its second quarter 2009
17 Financial Results. The release, which was filed with the SEC on Form 8-K the same day,
18 Reported "Consolidated revenues of \$613.2 million for the second quarter of 2009, an increase
19 Of 35.3% Compared to the second quarter of 2008, and net earnings of \$75.2 million or 78 cents
20 Per Diluted share." Mr. Kennedy declared, "*LPS had a very strong second quarter despite*
21 *A challenging macroeconomic environment. LPS, with its comprehensive end-to-end*
22 *Solutions for the mortgage and real estate industries, remains well positioned for an*
23 *Outstanding year in 2009 and to continue to grow profitably in 2010 and beyond.*" Added
24 CEO Carbiener, "Second quarter earnings were very solid across all our businesses. *Our*
25 *Default Services business continued to deliver strong results while our Loan Facilitation*
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28 **MOTION TO STAY AND DISMISS BASED ON FRAUD ON THE COURT**

1 Services benefitted from the improved origination environment.”

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3 The Company further reported:
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13 189. On the following day, the Company hosted an earnings conference call with
14 analysts.

15 CEO Carbinener and CFO Chan participated in this call. Indeed, CEO Carbiener began his
16 Opening remarks by reiterating the Company’s success:
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28 MOTION TO STAY AND DISMISS BASED ON FRAUD ON THE COURT

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Emergency Original Petition for Wrongful Foreclosure

190. CFO Chan then added:

MOTION TO STAY AND DISMISS BASED ON FRAUD ON THE COURT

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Emergency Original Petition for Wrongful Foreclosure

MOTION TO STAY AND DISMISS BASED ON FRAUD ON THE COURT

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16 **191.** Later in the call, CEO Carbiener further extolled the opportunities in the
17 Company's

18 Default Services business:

19 **Julio Quinteros – *Goldman Sachs* – Analyst**
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27 **Emergency Original Petition for Wrongful Foreclosure**
28 **MOTION TO STAY AND DISMISS BASED ON FRAUD ON THE COURT**

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MOTION TO STAY AND DISMISS BASED ON FRAUD ON THE COURT

Emergency Original Petition for Wrongful Foreclosure

MOTION TO STAY AND DISMISS BASED ON FRAUD ON THE COURT

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21 192. CEO Carbiener also dismissed any potential negativity from a federal
22 investigation

23 Into the Company:
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MOTION TO STAY AND DISMISS BASED ON FRAUD ON THE COURT

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7 **Emergency Original Petition for Wrongful Foreclosure**
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10 193. The market reacted positively to Defendants' statements regarding the Company's
11 strong

12 Financial results and positive outlook. For example:
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28 **MOTION TO STAY AND DISMISS BASED ON FRAUD ON THE COURT**

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11 194. As a result of Defendants' misrepresentations, and resulting analyst affirmation,
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15 **Emergency Original Petition for Wrongful Foreclosure**

16 Company's stock price climbed from a close of \$29.78 per share on July 28, 2009 to an
17 Artificially inflated price of \$34.18 on July 31, 2009, on unusually heavy trading volume.

18 **Second Quarter 2009 Form 10-Q**

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20 195. On August 14, 2009, LPS filed its quarterly report for the second quarter of 2009
21 on
22 Form 10-Q with the SEC, for the period ending June 30, 2009. The second quarter 2009 Form
23 10-Q reaffirmed the financial results announced in the July 29, 2009 press release and
24 July 30, 2009 conference call. Further, it contained substantially the same SOX
25 Certifications that was included in the Company's second quarter 2008 10-Q, that was
26 Signed by CEO Carbiener and CFO Chan. Moreover, the second quarter 2009 10-Q
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28 **MOTION TO STAY AND DISMISS BASED ON FRAUD ON THE COURT**

1 Contained the following statements:

2 Our results during the first six months of 2008 and 2009 demonstrate the
3 extent to which *rising default management revenues* can offset potential
4 declines in loan facilitation revenues. In the first six months of 2008, our
5 revenues from loan facilitation and default management (excluding Desktop
6 revenues) were approximately \$260.1 million and \$366.2 million,

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196. CEO Carbinener and CFO Chan and others described LPS’ default management
services

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1 Offered through its Loan Transaction Services segment – to include: (1) “foreclosure
2 Management services, including access to a *nationwide network of independent attorneys*,
3 Mandatory title searches, posting and publishing, and recording and other services”; (2)
4 “Property inspection and preservation services, designed to preserve the value of properties
5 Securing defaulted loans”; and (3) “asset management services, providing disposition services
6 For our customers’ real estate owned properties through a network of independent real estate
7 Brokers, attorneys and other vendors to facilitate the transaction.”

9 197. The Form 10-Q also allayed any concerns over regulatory inquiries or
10 investigations

11 Concerning the Company:
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19 198. As a result of CEO Carbinener and CFO Chan and others’ misrepresentations,
20 the
21 Company’s stock price rose from a close of \$32.13 per share on August 13, 2009 to an
22 Artificially inflated price of \$33.81 on August 17, 2009, on unusually heavy trading volume.

23 199. For the reasons stated in the Substantive Allegations, and as detailed herein, the
24 Statements made in the 2009 second quarter Form 10-Q, the July 29, 2009 press release and July
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28 **MOTION TO STAY AND DISMISS BASED ON FRAUD ON THE COURT**

30, 2009 earnings conference call set forth above, which touted among other things, the strong Results in the Company's default services business and increasing market share, were materially False and misleading when made or omitted material facts to make such statements not false or Misleading for the reasons stated above in ¶131.

Third Quarter 2009 Earnings Release and Conference Call

200. On October 22, 2009, the Company announced its third quarter 2009 financial results

In a press release entitled "Lender Processing Services, Inc. Reports Record Third Quarter Earnings." This release was also filed with the SEC on Form 8-K that same day. The Company Reported "consolidated revenues of \$619.4 million for the third quarter of 2009, an increase of 32.7% compared to the third quarter of 2008, and net earnings of \$75.5 million or 78 cents per Diluted share." For Loan Transaction Services in specific:

201. In the release, Mr. Kennedy highlighted how "LPS delivered strong results in the Third quarter despite an ongoing difficult business environment. LPS with its broad-based, Technology-driven end-to-end solutions for the mortgage and real estate industries, remains

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2 **Emergency Original Petition for Wrongful Foreclosure**

3 Well positioned for the fourth quarter and to continue to grow profitably in the years ahead.”

4 202. Mr. Carbiener echoed:

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13 203. On October 23, 2009, the Company held a conference call with various securities
14 Analysts to discuss LPS’ third quarter 2009 financial results. CEO Carbiener and CFO Chan
15 Participated In this call. CEO Carbiener opened with the following remarks:
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3 the fourth quarter, we now expect adjusted EPS for full-year 2009 to come in
4 at \$3.07 to \$3.09 per diluted share.
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3 management services is less than 5%. ***So looking forward, we have the***
4 ***opportunity to leverage our 50% marketshare in Desktop and our***
5 ***integrated offerings to increase penetration across all default-related***
6 ***productlines.***

7 204. CFO Chan followed suit, boasting of the Company's current and expected market
8 share

9 In the Default Services segment:
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5 ***market-leading technology presence to expand utilization of our***
6 ***comprehensive and integrated Default offerings.***

7 205. response to questions about projected growth rates, Carbiener reinforced the
8 Company's

9 Ability to grow its market share:
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19 206. The market reacted positively to these statements regarding the Company's strong
20 Financial results and continued growth in its businesses. For example:

21 a. On October 23, 2009, Fox-Pitt Kelton Cochran Caronia Waller reiterated its
22 "Outperform" rating with a report entitled "Room Left for More Growth." Specifically, the
23 Report noted how "default services business appears to be gaining market share" and that LPS'
24 Long-term growth would be driven by a "bump up in the industry revenue opportunity along
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1 With expanding its market share position (room to go and company keeps signing clients)” in
2 Default Services.

3 b. That same day, Duncan-Williams, Inc. (“Duncan-Williams”) rated LPS’ stock a “Buy”
4 Because it “remain[ed] bullish on the shares as it is clear that the company is gaining market
5 Share and executing well, the sales pipeline remains strong, and various industry trends are likely
6 To support the company’s growth over the coming years.”

7 c. Two days later, on October 25, 2009, Oppenheimer maintained its “Outperform” rating
8 Based on LPS’ “demonstrate[d] broad-based strength and affirm[ed] growth outlook through
9 2011.”

10 207. As a result of CEO Carbiener and CFO Chan misrepresentations, the Company’s
11 stock
12 Price climbed from a close of \$41.20 per share on October 21, 2009 to an artificially inflated
13 Price of \$43.99 on October 23, 2009, on unusually heavy trading volume.

14 **Third Quarter 2009 Form 10-Q**

15 208. On November 16, 2009, LPS filed its quarterly report for the third quarter of 2009
16 on
17 Form 10-Q with the SEC, for the period ending September 30, 2009. The third quarter 2009
18 Form 10-Q reaffirmed the financial results announced in the October 22, 2009 press release and
19 The October 23, 2009 conference call. Further, it contained substantially the same SOX
20 Certifications that were included in the Company’s second quarter 2008 10-Q, that were signed
21 By CEO Carbiener and CFO Chan. Moreover, the third quarter 2008 10-Q contained the
22 Following statements:
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1 [Consolidated] [p]rocessing and services revenues increased \$152.6 million,
2 or 32.7%, during the third quarter of 2009 when compared to the third quarter
3 of 2008. The increase was primarily driven by growth in our Loan

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23 209. CEO Carbiener and CFO Chan and others once again described LPS' default
24 Management services business to include, among other things, "foreclosure management
25 Services, including access to a nationwide network of independent attorneys, mandatory title
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28 **MOTION TO STAY AND DISMISS BASED ON FRAUD ON THE COURT**

1 **210.** Searches, posting and publishing, and recording and other services.” Further, in
2 reference

3 To regulatory inquiries and investigations, CEO Carbiener and CFO Chan unequivocally
4 Stated, “ *We do not expect that any such inquiries will have a material adverse effect on our*

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6 **Emergency Original Petition for Wrongful Foreclosure**
7 *Financial condition or our ability to operate our businesses.”*

8 211. For the reasons stated in the Substantive Allegations, and as detailed herein, the
9 Statements made in the 2009 third quarter Form 10-Q, the October 22, 2009 press release and
10 The Company’s October 23, 2009 earnings conference call set forth above, which touted
11 Among other things, the Company’s strong financial results and growing default services and
12 Market share, were materially false and misleading when made or omitted material facts to
13 Make such statements not false or misleading for the reasons stated above in ¶131.

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15 **Fourth Quarter and Fiscal-Year 2009 Earnings Release and Conference Call**

16 212. On February 8, 2010, in a press release entitled “Lender Processing Services, Inc.
17 Reports Strong Fourth Quarter Earnings,” which was simultaneously filed with the SEC on
18 Form 8-K, the Company announced its fourth quarter 2009 financial results. “[C]onsolidated
19 Revenues of \$608.1 million for the fourth quarter of 2009, an increase of 28.3% compared to the
20 Fourth quarter of 2008, and net earnings of \$74.9 million or 77 cents per diluted share” were
21 Reported. “Full year 2009 revenues of \$2.4 billion were a solid 29.0% above 2008 while net
22 Earnings of \$275.7 million in 2009 compared to \$230.9 million in the prior year.” As for the
23 Loan Transaction Services segment:
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11 213. According to Mr., Kennedy, “LPS had a strong fourth quarter despite challenging
12 market

13 Conditions and a fragile macro-economic environment. LPS with its market-leading presence
14 And its unique technology-driven solutions for the mortgage and real estate industries, remains
15 Well positioned to achieve its growth objectives in 2010 and beyond.”
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17 214. CEO Carbiener continued:
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11 On the following day, February 9, 2010, CEO Carbiener and CFO Chan and others
12 Hosted an earnings conference call with analysts to discuss LPS' fourth quarter 2009 and 2009
13 Fiscal yearend financial results. CEO Carbiener and CFO Chan participated in this call.
14 CEO Carbiener led the call reiterating the Company's successes:
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215. Chan also reinforced the Company’s strong financials:

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14% from the third quarter to the fourth quarter 2009. Many of our customers remain focused on the Treasury's HAM program as well as their own loss mitigation initiatives in the last few months. We believe this decline is temporary as evidenced by the growing inventory of delinquent loans as well as the deteriorating age of these loans during the same time period.

216. CEO Carbiener and CFO Chan' statements regarding the Company's continued financial

Success and rosy outlook for business growth again elicited favorable reactions from the Market. On February 9, 2010, Oppenheimer, Duncan-Williams, and RBC Capital Markets all Maintained their "Outperform" or "Buy" ratings for LPS' stock. Moreover, Duncan-Williams Was "surprised by the weakness in the shares" that day but viewed it "as an excellent buying Opportunity."

Fiscal Year 2009 Form 10-K

217. On February 23, 2010, LPS filed its annual report for the fiscal year ending December

31, 2009 on Form 10-K with the SEC. The Form 10-K reaffirmed the 2009 fourth quarter and Fiscal year-end financial results announced in the February 8, 2010 press release and February 9, 2010 conference call. Further, it contained substantially the same SOX certifications that were Included in the Company's second quarter 2008 10-Q, that were signed by CEO Carbiener and CFO Chan. Moreover, the Form 10-K contained the following statements:

Processing and services revenues [for the Loan Transaction Services segment] increased \$401.1 million, or 31.3%, during 2009 when compared to

1 2008, and \$209.5 million, or 19.5%, during 2008 when compared to 2007.
2 The increases during 2009 when compared to 2008, and during 2008 when
3 compared to 2007, were *primarily driven by our default management*
4 *services due to strong market growth as well as continued market share*
5 *gains.*

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7 218. It also described the default management services of LPS' Loan Transaction
8 Services

9 Segment as follows:
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14 219. The 2009 Form 10-K addressed various regulatory matters impacting the
15 Company, but

16 At the same time explicitly assures investors that all necessary remedial steps have been taken:
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14 220. For the reasons stated in the Substantive Allegations, and as detailed herein, the
15 Statements made in the 2009 Form 10-K, the February 8, 2010 press release, and the February 9,
16 2010 earnings conference call set forth above, which touted among other things, the Company's
17 Ability to achieve market share gains and strong growth in default services, were materially false
18 And misleading when made or omitted material facts to make such statements not false or
19 Misleading for the reasons stated above in ¶131.
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21 **April 3, 2010 The Wall Street Journal Article**
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23 221. On April 3, 2010, *The Wall Street Journal* published an article entitled "U.S.
24 Probes
25 Foreclosure-Data Provider," which is quoted in pertinent part below in ¶246. The author
26 Described LPS' default services business and how the Company was subject to an investigation
27

28 **MOTION TO STAY AND DISMISS BASED ON FRAUD ON THE COURT**

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2 By the U.S. Attorney's office. When asked about problems with some of the Company's
3 Paperwork, such as LPS' inappropriate use of such placeholders as "Bogus Assignee," Mr.
4 Kersch stated that "Unfortunately, *on a few occasions*, the document was inadvertently
5 Recorded before the field was updated."

6 222. For the reasons stated in the Substantive Allegations, and as detailed herein, Mr.
7 Kersch's
8 Statements from this article, which ignored the systemic problem with LPS' default services
9 Paperwork and otherwise downplayed the severity of the problem, were materially false and
10 Misleading when made or omitted material facts to make such statements not false or
11 Misleading for the reasons stated above in ¶131.

12
13 **April 5, 2010 Press Release**

14 223. On April 5, 2010, LPS issued a press release to alleviate growing concerns over
15 certain
16 Of its Business practices that were subject to ongoing state and federal investigations. The
17 Company Stated in pertinent part:
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17 224. For the reasons stated in the Substantive Allegations, and as detailed herein, the

18 Statements made in this press release, which assured the market that the services offered at its

19 Subsidiary were limited to a small number of customers, unrelated to the Company's core

20 Default management services, and that the Company had taken necessary remedial actions were

21 Materially false and misleading when made or omitted material facts to make such statements

22 Not false or misleading for the reasons stated above in ¶131.

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24 **First Quarter 2010 Earnings Release and Conference Call**

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26 225. On April 22, 2010, the Company issued its first quarter 2010 financial results in a

27 press

28 **MOTION TO STAY AND DISMISS BASED ON FRAUD ON THE COURT**

1 Release entitled, "Lending Processing Services, Inc. Reports Strong First Quarter Earnings."

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3 **Emergency Original Petition for Wrongful Foreclosure**

4 Such was also filed with the SEC on Form 8-K the same date. The Company reported in
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6 Pertinent part:

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24 **226.** Mr. Kennedy boasted, "LPS is off to a strong start in 2010 despite difficult market
25 Conditions and a challenging broader macro-economic environment. LPS, with its strong market
26 Presence and its unique portfolio of services, remains well positioned to achieve its growth
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Objectives in 2010 and beyond.”

227. CEO Carbiener made the following comments:

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228. On the next day, April 23, 2010, the Company hosted a conference call with securities

Analysts to discuss the Company’s first quarter 2010 financial results. CEO Carbiener and CFO Chan participated in this call. Carbiener began with encouraging remarks about the Company’s Growth, including in the Default Services business:

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229. CFO Chan proceeded with similar praise:

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14 230. Carbiener later reinforced the importance of LPS' growing market share in its
15 Default

16 Services segment:
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24 **Emergency Original Petition for Wrongful Foreclosure**
25 **231.** Moreover, Carbiener baldly downplayed the significance of regulatory and legal
26 actions
27 Stemming from the illicit behavior of DocX employees and other LPS personnel:
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23 232. Company's touted continued financial success, coupled with ' CEO Carbiener and
24 CFO
25 Chan and others reassurances regarding its business practices, produced a positive reaction from
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28 **MOTION TO STAY AND DISMISS BASED ON FRAUD ON THE COURT**

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3 The market. Indeed, Oppenheimer maintained its "Outperform" rating on April 23, 2010.

4 Duncan-Williams also held its "Buy" rating based in part on its belief "that investors do not fully
5 Appreciate the company's market share gains and the pending reacceleration in foreclosures,
6 Which appeared to begin in March."

7 233. As a result of Defendants' misrepresentations, and resulting analyst affirmation,
8 LPS'

9 Stock price climbed from a close of \$38.32 per share on April 22, 2010 to an artificially inflated
10 Price of \$39.74 on April 23, 2010, on unusually heavy trading volume.

11 **First Quarter 2010 Form 10-Q**

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13 234. On May 6, 2010, LPS filed its quarterly report for the first quarter of 2010 on
14 Form 10-Q

15 With the SEC, for the period ending March 31, 2010. The first quarter 2010 Form 10-Q
16 Reaffirmed the financial results announced in the April 22, 2010 press release and April 23, 2010
17 Conference call. Further, it contained substantially the same SOX certifications that were
18 Included in the Company's second quarter 2008 10-Q, that were signed by CEO Carbiener and
19 CFO Chan. Moreover, the first quarter 2010 10-Q contained the following statements:
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19 235. Again, the default management services segment was said to provide, among
20 other

21 Services, "foreclosure management services, including administrative services to a
22 Nationwide network of independent attorneys and trustees, mandatory title searches,
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24 236. Posting and publishing, and other services." Further, regarding ongoing regulatory
25 matters, CEO Carbiener and CFO Chan and others misrepresented the true scope of their
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2 Employees' illicit conduct and the Company's resulting potential liability: Due to the heavily

3 Regulated nature of the mortgage industry, from time to time we receive inquiries and requests

4 For information from various state and

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24 237. For the reasons stated in the Substantive Allegations, and as detailed herein, he
25 Statements made in the 2010 first quarter Form 10-Q, the April 22, 2010 press release,
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3 And the Company's April 23, 2010 earnings conference call set forth above, which touted
4 Among other things, the Company's increase in default revenues and strong market presence,
5 Were materially false and misleading when made or omitted material facts to make such
6 Statements not false or misleading for the reasons stated above in ¶131.

7 **May 14, 2010 Florida Times Union Article**

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9 238. On May 14, 2010, in an article entitled "Florida investigating 'bogus' foreclosure
10 Records," it was reported in *The Florida Times Union* that Florida's attorney general was
11 Investigating whether LPS was involved with forging real-estate documents for foreclosure
12 Lawsuits. The article stated that "The probe deals with a Lender Processing subsidiary that
13 Seems to be creating and manufacturing 'bogus assignments' of mortgage." In a statement, Mrs.
14 Kersch said that the company hasn't done anything wrong and would cooperate with any agency.
15 She also said DocX has no idea whether documents are being used in foreclosure suits and that
16 The company simply enters information into a standard form and "has no independent discretion
17 Concerning the timing of the preparation of the document nor the information contained."
18 Moreover, Mrs. Kersch said DocX began preparing mortgage assignments in 2008 and stopped
19 Last year.

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22 239. For the reasons stated in the Substantive Allegations, and as detailed herein, the
23 Statements made in this article by Mrs. Kersch regarding the Company's documentation
24 Practices were materially false and misleading when made or omitted material facts to make
25 Such statements not false or misleading for the reasons stated above in ¶131.
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June 7, 2010 National Mortgage News Article

240. On June 7, 2010, it was again reported in the *National Mortgage News* that the Florida

Attorney general's office had launched a civil investigation implicating LPS in the use of Fabricated documents in foreclosure cases. In the article, Mrs. Kersch explained how incomplete Documents had been inadvertently recorded in foreclosure proceedings before missing Information was obtained. However, the Company was said to be conducting its own Investigation and, to date, had not found that any inadvertently recorded documents were Used in a court proceeding. Kersch added, "Moreover, Docx has no involvement in Deciding whether or when documents are used in any court proceeding."

241. For the reasons stated in the Substantive Allegations, and as detailed herein, the Statements made in this article by Mrs. Kersch regarding the Company's recording of Incomplete documents were materially false and misleading when made or omitted material facts To make such statements not false or misleading for the reasons stated above in ¶131.

Second Quarter 2010 Earnings Release and Conference Call

242. On July 22, 2010, the Company issued its second quarter 2010 financial results in a press

Release entitled "Lender Processing Services, Inc. Reports Strong Second Quarter Earnings." The release, which was filed with the SEC on Form 8-K the same day, stated in pertinent part:

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23 243. In this press release, Mr. Kennedy assured investors, "LPS had a strong quarter
24 despite

25 Very difficult conditions in both the origination and default markets and a sustained challenging
26 Macro-economic environment. LPS, with its comprehensive end-to-end solutions for the
27 Mortgage and real estate industries, remains well positioned for a solid 2010 and to continue

28 **MOTION TO STAY AND DISMISS BASED ON FRAUD ON THE COURT**

1 To grow profitably in 2011 and beyond.”

2
3 244. CEO Carbiener added the following support:

4 Our Mortgage Processing business delivered another strong quarter and while
5 our Loan Facilitation and Default Services businesses were both impacted by
6 sluggish industry trends, *we continued to expand market share in both*
7 *areas.*

8 **Emergency Original Petition for Wrongful Foreclosure**

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17 245. On the following day, July 23, 2010, the Company hosted an earnings onference
18 call

19 With analysts to discuss LPS’ second quarter 2010 financial results. CEO Carbiener

20 And CFO Chan participated in this call. In particular, in his opening remarks, CEO Carbiener

21 Focused on LPS’ growing market share, especially in its default services segment:
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246. Thereafter, when asked about growing LPS' Default Services revenue, CEO
Carbiener

Touted the Company's prospects:

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13 247. The market reacted positively to statements regarding the Company's strong
14 perform

15 CEO Carbiener and CFO Chan and others ance in an unfavorable market and its growth
16 Prospects Moving forward. For example, on July 23, 2010, following the earnings call, Duncan-
17 Williams Reiterated its "Buy" rating, stating that any perceived weakness in the second quarter
18 Financials was attributed "to relatively soft market conditions and not due to any LPS specific
19 Issues. The company continues to gain market share and we believe the overall Market
20 opportunity in Default Services remains as large as ever."
21
22

23 **Second Quarter 2010 Form 10-Q**

24 248. On August 9, 2010, LPS filed its quarterly report for the second quarter of 2010
25 on Form

26 10-Q with the SEC, for the period ending June 30, 2009. The second quarter 2010 Form 10-Q
27 Reaffirmed the financial results announced in the July 22, 2010 press release and July 23, 2010

28 **MOTION TO STAY AND DISMISS BASED ON FRAUD ON THE COURT**

1 and CFO Chan and others

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3 **Emergency Original Petition for Wrongful Foreclosure**

4 Conference call. Further, it contained substantially the same SOX certifications that were

5 Included in the Company's second quarter 2008 10-Q, that were signed by CEO Carbiener and

6 CFO Chan. Moreover, the second quarter 2010 Form 10-Q contained the following statements:

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20 **249.** The Company once more described its default management services segment to
21 include

22 “Foreclosure management services, including *administrative services to a nationwide network*
23 *Of independent attorneys* and trustees, mandatory title searches, posting and publishing, and
24 Other services.”

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28 **MOTION TO STAY AND DISMISS BASED ON FRAUD ON THE COURT**

1 250. Additionally, CEO Carbiener and CFO Chan and others continued to downplay
2 the
3 Severity of ongoing regulatory matters:
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18 251. For the reasons stated in the Substantive Allegations, and as detailed herein, the
19 Statements made in the 2010 second quarter Form 10-Q, the July 22, 2010 press release, and
20 The July 23, 2010 earnings conference call set forth above, which touted among other things,
21 The Company's increase in default services market share and network of independent attorneys,
22 Were materially false and misleading when made or omitted material facts to make such
23 Statements not false or misleading for the reasons stated above in ¶131.
24

25 **VII. THE TRUTH BEGINS TO EMERGE**
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27 252. Beginning on April 16, 2009, through a series of partial revelations, the market
28 slowly

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1 Began to learn the truth of the various illicit business practices that CEO Carbiener and CFO
2 Chan and others were engaged in to drive LPS' revenue growth and market share. As detailed
3 Below, rather than reveal the truth about the Company's illicit business practices, and CEO
4 Carbiener and CFO Chan and others involvement in the fraud, Defendants repeatedly denied any
5 Wrongdoing and misled the market about the true nature of the Company's business practices,
6 Their pervasiveness, the steps Defendants had taken to address those practices, and the impact of
7 The illicit practices on the Company's financial condition. Through their lies and wrongdoing,
8 CEO Carbiener and CFO Chan and others endeavored to keep the truth hidden from the
9 market and maintain an appearance of legitimacy.

10 On April 16, 2009, after the market closed, the *Dow Jones Daily Bankruptcy Review* issued

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15 **Emergency Original Petition for Wrongful Foreclosure**

16 An article entitled "DOJ Probing Mortgage Data Processing Firms," which stated in pertinent
17 part:

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On April 17, 2009, before the market opened, Defendants immediately issued

MOTION TO STAY AND DISMISS BASED ON FRAUD ON THE COURT

1 253. a press release attempting to refute the suspicion raised by the article as to LPS'
2 business

3 Practices and buoy the Company's stock price:
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20 254. These disclosures, which raised suspicion as to the true nature of CEO Carbiener
21 and

22 CFO Chan and others document execution and preparation practices, and was a partial

23 Manifestation of the risk hidden by CEO Carbiener and CFO Chan and others false and

24 Misleading statements, caused the Company's stock price to plummet by pproximately 13%

25 From a close of \$33.18 on April 16, 2009 to a close of \$28.89 on April 17, 2009. This stock
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28 **MOTION TO STAY AND DISMISS BASED ON FRAUD ON THE COURT**

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2 **Emergency Original Petition for Wrongful Foreclosure**
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5 Drop would have been even greater had CEO Carbiener and CFO Chan and others not falsely
6 Reassured the market with the misleading statements detailed in their press release.

7 255. Thereafter, on February 23, 2010, the Company issued its annual report on Form
8 10-K

9 For the year ending December 31, 2009. In the Form 10-K, CEO Carbiener and CFO Chan and
10 Others admitted that:
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25 256. This disclosure revealed that there were problems with DocX, that the Company
26 had

27 Faced an inquiry from the Clerk of Court of Fulton County, and that it was subject to an

28 **MOTION TO STAY AND DISMISS BASED ON FRAUD ON THE COURT**

Investigation by the U.S. Attorney General. However, as CEO Carbiener and CFO Chan and

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Others buried this disclosure at the back of the Company's 10-K, and downplayed it by falsely Noting that they had "taken necessary remedial action with respect to this matter," CEO Carbiener and CFO Chan and others succeeded in maintaining the artificial inflation in the Company's stock price.

257. On Saturday, April 3, 2010, *The Wall Street Journal* published an article titled, "U.S.

Probes Foreclosure-Data Provider." The article called into question LPS's subsidiary DocX, and Its preparation of documentation used by banks in the foreclosure process. More specifically, The Article described an investigation by the U.S. Attorney's Office for the Middle District of Florida. The article stated in pertinent part:

LPS has said its software is used by banks to track the majority of U.S. residential mortgages from the time they are originated until the debt is satisfied or a borrower defaults. When a borrower defaults and a bank needs to foreclose, LPS helps process paperwork the bank uses in court.

1 During the housing boom, mortgages were originated by lenders, quickly
2 sold to Wall Street firms that bundled them into debt pools and then sold to
3 investors as securities. The loans were supposed to change hands but the
4 documents and contracts among borrowers and lenders often weren't altered
to show changes in ownership, judges have ruled.

5 That has made it hard for banks, which act on behalf of mortgage-securities
6 investors in most foreclosure cases, to prove they own the loans in some
instances.

7 8 **Emergency Original Petition for Wrongful Foreclosure** 9 10 11 12 13 14 15

16 258. On April 5, 2010, LPS issued a press release in response to *The Wall Street*
17 *Journal*

18 Article, attempting to falsely assure investors and prop up the Company's stock price. The
19 Article stated in pertinent part:
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28 **MOTION TO STAY AND DISMISS BASED ON FRAUD ON THE COURT**

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1 259. Following the publication of *The Wall Street Journal* article and CEO Carbiener
2 and
3 CFO Chan and others response, shares of LPS stock dropped 4.12%, or \$1.57 per share, on
4 April 5, 2010, to close at \$36.54, on heavy trading volume. Had CEO Carbiener and CFO Chan
5 And others not falsely reassured the market with the misleading statements in their press release,
6 This stock drop would have been more significant.

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8 260. On September 30, 2010, Representative Alan Grayson posted a video on
9 youtube.com,
10 Discussing various issues with respect to mortgage fraud. In particular, he detailed LPS'
11 Illicit practices, stating in pertinent part and substance that: 41

12 **The consequences of trillions of dollars of securitized mortgages, having no**
13 **legal standing to foreclose. So they have simply created a system where**
14 **servicers hire foreclosure mill law firms, whose business is to forge**
15 **documents showing or purporting to show that they have a legal right to**
16 **foreclose. Some of these foreclosure mills have been featured in the New**

17 **Emergency Original Petition for Wrongful Foreclosure**

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9 41 The following statement is from an unofficial transcription of the video.

10 261. On October 1, 2010, the website Naked Capitalism issued a post entitled
11 "Congressmen
12 Attack LPS, Servicer Misconduct: PR Counteroffensive Starting," which stated in pertinent
13 Part:
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2 **Emergency Original Petition for Wrongful Foreclosure**
3 sincerely doubt anyone will try that line of argument in court but it gives you
4 an idea of how fundamental these problems are.

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22 262. On October 4, 2010, in response to continued media reports and government
23 Investigations calling into question the Company's default-related services that it provides
24 To mortgage lenders and servicers, LPS issued a press release commenting on what it
25 Considered "mischaracterizations of its services." The press release stated in pertinent part:
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mortgage signed in this manner and provided these corrected assignments of mortgage to the two lender/servicer clients or their attorneys. LPS continues to believe this will not have a material adverse impact on its business or results of operations.

263. As these revelations between October 1, 2010 and October 4, 2010 made their way into

The market, this caused the price of LPS common stock to plummet more than 13%, as it fell from a close of \$31.48 on October 1, 2010 to close at \$27.31 on October 5, 2010, on unusually heavy trading volume.

VIII. FURTHER REVELATIONS FOLLOWING THE FRAUD PERIOD

264. Information regarding Defendants' illicit business practices continues to be revealed to

The market and Defendants continue to mislead the market. On October 5, 2010, *the New York Times* issued an article entitled "Foreclosure Furor Rises; Many Call for a Freeze":

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2 **Officials from the federal agencies declined to comment.**
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22 265. On October 6, 2010, before the market opened, Defendants hosted a conference
23 call to
24 Further discuss the Company's October 4, 2010 press release. On this call, while CEO Carbiener
25 And CFO Chan and others repeated the disclosures found in the October 4, 2010 press release
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28 **MOTION TO STAY AND DISMISS BASED ON FRAUD ON THE COURT**

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3 About the illicit practices at DocX and the Company's robo-signing practices, they also
4 Attempted to dispel any market concern regarding these practices through false assurances and
5 Outright lies.
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7 **Jeff Carbiener – *Lender Processing Services, Inc. – President & CEO***
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2 266. Also, on October 6, 2010, *The Florida Times Union* issued the following article
3 Regarding LPS:
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4 "I'm confident that once the courts in these cases have been presented with
5 all the facts, the default management services provided by LPS will be found
6 once again to be legal, ethical and responsible in all respects," he said.

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8 267. On October 8, 2010, the *Daily Finance* published an article detailing the
9 Company's

10 Robo-signing and troubling foreclosure tactics, which stated in pertinent part:
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28 **MOTION TO STAY AND DISMISS BASED ON FRAUD ON THE COURT**

1 First a look at the two major class actions, in Mississippi and Kentucky, that
2 have been filed against LPS and local law firms LPS refers business to.
3 While LPS had net income of \$276 million in 2009, as the website Naked
4 Capitalism discusses, the money at stake in the suits is enormous, potentially
5 billions of dollars in attorney's fees. The Mississippi class action also targets

6 **Emergency Original Petition for Wrongful Foreclosure**

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15 268. On October 11, 2010, the U.S. Trustee joined as a plaintiff, on behalf of all
16 United States Trustees, in the Second Amended Complaint filed in *Thorne v. Prommis Solution*
17 *Holding Corp.*, No. 09-11763 (Bankr. N.D. Miss. Oct. 11, 2010). The complaint alleges
18 That LPS engaged in unlawful fee splitting and unauthorized practice of law in connection
19 With a bankruptcy matter. Subsequently, in the Third Amended Complaint, the U.S. Trustee
20 Requested that the court fine the defendants (including LPS) "in an amount sufficient for
21 The sake of example and by way of punishment to deter other entities from engaging in similar
22 Conduct ever again in the future."
23

24 269. On October 13, 2010, despite numerous false assurances to the market about the
25 Legitimacy of LPS' business practices, *The Wall Street Journal Online*, issued an article
26 Entitled "Probe Targets Foreclosure Paperwork; Tens of Thousands of Proceedings Are
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28 **MOTION TO STAY AND DISMISS BASED ON FRAUD ON THE COURT**

1 Suspected of Being Tainted; Return of the 'Robo Signers,'" which stated: .

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1 *That paperwork processing at the law firms and lenders allegedly didn't*
2 *review all information needed, such as who owned the loan or borrower*
3 *financial information, the Florida attorney general claims.*

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1 The company said it had taken steps to correct signature issues on
2 documents. "When we sign documents, we do so with what we believe to be
3 proper authorization, with proper control procedures in place to protect us
4 from legal liability," Todd Johnson, Lender Processing general counsel, said
5 on the conference call. "In the Docx situation, when we discovered an error
6 in that process, we corrected it, and we stand behind those processes and
7 procedures."

8 In Florida, attention increasingly is turning to the law firms that processed
9 much of the paperwork.

10 ***Mr. McCollum, the Florida attorney general, is in the middle of a court***
11 ***fight over whether he can subpoena documents from the firms.***

12 On Tuesday, Citigroup, Inc., which had used Mr. Stern's firm, said that
13 federal mortgage giants Fannie Mae and Freddie Mac had approved the use
14 of his services: "Pending the outcome of the AG's investigation, Citi is not
15 referring new matters to this firm."

16 A Citi spokesman said it continues to refer new matters to two of the
17 mortgage agency-approved firms in Florida -- Marshall C. Watson and
18 Shapiro & Fishman -- and that the bank will continue to monitor any
19 developments concerning their performance.

20 Mr. Stern's firm had been on Freddie Mac's and Fannie Mae's list of
21 designated counsel. Spokespersons for both said Freddie Mac and Fannie
22 Mae had instructed their mortgage-servicers to suspend foreclosure referrals
23 to Mr. Stern's firm.

24 GMAC won't grant new business to Mr. Stern's firm as well as the other
25 firms Mr. McCollum is investigating, according to a person familiar with the
26 matter. Jeffrey Tew, a lawyer for Mr. Stern's law firm, declined comment
27 about Mr. Stern's clients.

28 270. Thereafter, on October 26, 2010, *The Washington Post*, issued an article entitled
"U.S.

Probing foreclosure processors," this stated:

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The more banks foreclosed on homes, the more a little-known company in Florida called Lender Processing Services saw its revenue and stock price soar.

For a fee, the Jacksonville company would locate and assemble the documents necessary for a lender to foreclose on a borrower who defaulted on a mortgage. Working on behalf of the biggest names in the industry, including J.P. Morgan Chase, Bank of America and Citigroup, LPS says it handles more than half of all foreclosures in the country.

Now, amid reports of shoddy and possibly fraudulent paperwork, LPS as well as a handful of other document processors and law firms are coming under scrutiny for the criminal investigations into the foreclosure debacle.

Law enforcement authorities on both state and federal levels are probing whether individuals at these foreclosure companies and at the banks that hired them committed an array of possible crimes - mail and wire fraud, money laundering, conspiracy and racketeering. No charges have been filed.

These officials say they are taking a well-tested approach in their investigations: press low-level employees to implicate higher-up executives. Already, investigators have obtained in sworn testimony detailed descriptions of what took place inside the foreclosure companies.

Florida's attorney general, Bill McCollum, said in an interview that "we know there are problems of great significance" at LPS. He added that one of the most important questions being asked is, "Does this involve the CEO" of a major bank?

"It's way too early to tell whether the bigger financial institution had officers committing criminal fraud," McCollum said. "It may be something that shows up, but it's too early to say right now."

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1 better understand our business and the industry.” She declined to comment
2 further.

3 Formerly a branch of Fidelity National Financial - the nation’s largest title
4 insurer - LPS was spun off in 2008. It’s still housed in the same complex as
5 the title company, in one of two twin 12-story buildings with expansive
6 views of the Jacksonville waterfront. With 8,900 employees, it is one of the
city’s largest employers.

7 Some homeowners contesting foreclosures have alleged that the firm’s
8 employees forged signatures on paperwork that proves ownership of a loan.
9 In other cases, the employees listed “Bogus Assignee” as the mortgage holder
and “Bad Bene” as the borrower.

10 After The Washington Post reported in late September on several instances in
11 which a single person’s signature on some foreclosure documents appeared to
12 be scripted by different people, LPS admitted that a subsidiary called Docx in
13 Alpharetta, Ga., improperly prepared some documents used for foreclosures.
14 Company officials said that the paperwork problems were limited to filings
made in 2008 and 2009 and that the division has since been shut down.

15 “The varying signature styles” resulted from a decision made by the manager
16 “to allow an employee to sign an authorized employee’s name,” the company
17 said in a statement on Oct. 4, adding that it had corrected the affected
documents.

18 Chief executive Jeffrey S. Carbiener emphasized in a recent conference call
19 with analysts that the company had found “isolated instances of errors.”
20 There’s unfounded concern that a large percentage of transactions are invalid,
21 Carbiener said. “That is just simply not the case.”

22 No charges have been filed against LPS. *The Justice Department’s U.S.*
23 *attorney in central Florida has launched a criminal probe into whether*
24 *LPS manufactured fake assignments of mortgage. McCollum’s office is*
25 *investigating whether the company forged signatures in order to speed up*
26 *foreclosures. And the U.S. Trustee’s office, which is charged with*
monitoring bankruptcies, is investigating whether the company improperly
hastened foreclosures.

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2 LPS - which reached \$44 a share in October 2009 as a surge of foreclosures
3 began hitting the market - plummeted nearly 40 percent since then to \$27 a
4 share. The most dramatic fall occurred in the past month, since several major
5 lenders announced they would freeze foreclosure sales.
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28 **MOTION TO STAY AND DISMISS BASED ON FRAUD ON THE COURT**

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2 Smaller foreclosure businesses around the country have found themselves the
3 target of civil or criminal investigations.

4 In Massachusetts, the attorney general is investigating whether Harmon Law
5 Offices engaged in unfair and deceptive housing practices. The law firm has
6 denied the charges.

7 In Florida, the attorney general is investigating whether four law firms -
8 Shapiro & Fishman, Marshall C. Watson law offices, the Florida Default Law
9 Group, and the Law Offices of David J. Stern - fabricated documents. All
10 four law firms have denied the allegations.

11 And in Maryland, two lawyers - Bethesda-based Jacob Geesing and Hunt
12 Valley-based Thomas P. Dore - have admitted in court filings that they had
13 other people sign their names in foreclosure documents. The lawyers told the
14 courts that they are correcting each instance, but they face possible sanctions
15 by judges.

16 A challenge law enforcement officials face is that LPS and other foreclosure
17 businesses are just one part of a chain of companies that handle different
18 aspects of a single foreclosure. The mortgage service divisions of major
19 lenders initiate foreclosure proceedings, but the surge of struggling borrowers
20 defaulting on their mortgages overwhelmed them with paperwork.

21 So mortgage servicers turned to document-processing firms such as LPS.
22 When these contractors became overworked, some law firms seized on the
23 opportunity to offer similar document-processing services in addition to their
24 legal work. Many of these contractors were paid for each case they handled -
25 the more foreclosures they did, the more they received in payment.

26 Some law enforcement officials say that a goal of their investigations is to
27 negotiate an industrywide settlement with mortgage lenders that will include
28 forgiving the principal on a loan and more loan modifications.

Arizona Attorney General Terry Goddard, who is part of the executive
committee of a joint investigation into foreclosure processes by the 50 states,
said the "long list of abuses" by mortgage companies and their contractors
could be cured by a clear and transparent way for borrowers to negotiate with
lenders.

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2 271. On October 28, 2010, CEO Carbiener and CFO Chan issued a Form 8-K,
3 announcing

4 That CFO Chan would no longer be serving as CFO and would be leaving the Company.

5 Effective as of November 21, 2010.

6 272. On December 6, 2010, *Reuters* issued an article entitled "Special report: Legal
7 woes

8 Amount for a foreclosure kingpin," which stated:

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23 information from an LPS spokeswoman and court records including an
24 October 21 ruling by a judge in Brooklyn, New York. Records in county
25 recorders' offices, and in the judge's opinion, show that "robosigning" and
26 preparation of apparently false documents went on at these sites on a large
27 scale.

28 **MOTION TO STAY AND DISMISS BASED ON FRAUD ON THE COURT**

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22 **273.** On March 13, 2011, *The Florida Times-Union* issued an article entitled “The LPS
23 Solutions: Jacksonville’s Lender Processing Services has figured out how to profit from nearly
24 Every step of the mortgage business. Here’s how they do it,” which stated in pertinent part:
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28 **MOTION TO STAY AND DISMISS BASED ON FRAUD ON THE COURT**

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1 The company also says that lenders are using LPS technology to process
2 more than 50 percent of all U.S. foreclosures. Although the company was
3 built on its mortgage servicing technology, the mortgage default technology
4 has become the biggest part of its business because of the real estate market
5 collapse of the last few years. Default management services accounted for 43
6 percent of LPS' \$2.456 billion in 2010 revenue.

7 "We are not a default-based firm," Carbiener said, adding that market
8 circumstances have increased the default business.

9 "What has happened is the market has played in our favor in the last couple
10 of years," he said

11 As it became its biggest business segment, the default services business has
12 also become a lightning rod for criticism because of the nationwide
13 foreclosure mess and LPS' role in the default process. "To a certain extent
14 our success has put us in the spotlight," Carbiener said in an interview with
15 the Times-Union.

16 *More than a year ago, the U.S. Attorney's Office for the Middle District of*
17 *Florida launched an investigation into allegations that an LPS subsidiary*
18 *in Georgia called DocX had falsified documents used in foreclosure*
19 *proceedings. LPS says it has been cooperating with the investigation and*
20 *Carbiener said the company discovered problems at DocX before the*
21 *investigation began.*

22 "We found it. We remedied it," Carbiener said. "All of that was done before
23 any regulators asked a question about it."

24 *LPS has also been accused in lawsuits of engaging in illegal fee-splitting*
25 *arrangements with law firms that use the company's technology in*
26 *foreclosure proceedings. LPS has denied those charges.*

27 *The company says its role in a foreclosure is to provide technology used by*
28 *lenders and by attorneys hired by those lenders, and LPS' fees are*
independent of how much a lawyer charges a client.

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“I think in some respects they have a target on their back.”

274. April of 2011, the Board of Governors of the Federal Reserve System (“Board of Governors”), the Office of the Comptroller of the Currency (“OCC”), the Federal Deposit Insurance Corporation (“FDIC”), and the Office of Thrift Supervision (“OTS”)(collectively, the “Agencies”) produced a report entitled “Interagency Review of Foreclosure Policies and Practices.” 42 In this report, the Agencies summarized their findings from reviewing Foreclosure processing at 14 federally regulated mortgage servicers. *Id.* at 1. The Agencies also Reviewed LPS, as they provide “significant services to support mortgage servicing and Foreclosure processing across the industry.” *Id.* at 10. The Agencies reported that “[d]uring the Review of LPS, the agencies found *deficient practices* related primarily to document execution Services that LPS, through its DocX, LLC, and LPS Default Solutions, Inc. subsidiaries had Provided to servicers in connection with foreclosures.” *Id.* The Agencies stated that they would Be taking formal enforcement action against LPS. *Id.*

275. On April 3, 2011, the television program 60 minutes aired a segment on LPS, Detailing the robo-signing and forging of documents that occurred at DocX, as further Detailed above.

276. Thereafter, on April 13, 2011, LPS and DocX entered into a Consent Order⁴³ with the Agencies. Under the Consent Order, among various other provisions, LPS was required to Conduct a document Execution review to determine whether: (1) factual assertions made in Mortgage Documents executed By LPS and its employees were correct; (2) LPS had authority to

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Execute Mortgage Documents on behalf Of the servicers; (3) its notarization practices were Consistent with their attestations; (4) its executed Mortgage Documents complied with legal Requirements; and (5) its practices and assertions resulted in Financial

42 See Interagency Review of Foreclosure Policies and Practices, April 2011 (“Interagency Report”). A copy of this report is attached as **Exhibit L**.

43 **The Consent Order is attached hereto as Exhibit M.**

2. Harm to borrowers. Based on this review, the Company was required to Prepare a written Report of its findings and submit a remediation plan. In addition, the Company Was required to submit a plan to the Agencies to strengthen the board’s oversight of default Management Services That LPS provides to Examined Servicers. It also had to submit a Compliance program addressing its compliance with legal requirements and enhance its internal Audit program. Additionally, LPS was required to retain an independent consultant to conduct a Risk assessment of its default management services.

3. On April 15, 2011, *The Wall Street Journal Online* issued an article Detailing how a Federal bankruptcy judge ruled that she would impose sanctions on LPS arising Out of a false Affidavit filed by LPS. This article stated:

A federal bankruptcy judge ruled that she would impose sanctions on Lender Processing Services Inc. for submitting a false affidavit in a foreclosure case that included an inadequate review of information known as a “robo-signing.”

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IX. LOSS CAUSATION

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1 277. As detailed throughout and further herein, Defendants' fraudulent scheme
2 artificially

3 Inflated LPS' stock price by failing to disclose that: (a) throughout the Class Period, the
4 Company's revenues were the product of an improper business model and illicit practices and
5 Were thus unsustainable (*see, e.g.*, ¶¶35-103); (b) the Company's business model provided free
6 Default management services to clients but generated revenues through fees charged to attorneys
7 For referrals and the completion of legal work, (*see, e.g.*, ¶¶35-44); (c) the Company's network of
8 Attorneys were not independent because they were selected by LPS, were required to follow
9 Specific protocols and timeframes imposed by LPS, were strongly discouraged by LPS from
10 Communicating with their clients, and were subject to APR (*see, e.g.*, ¶¶44-55); (d) in order to
11 Push through the volume of work created by the Company's business model, LPS employed
12 Myriad illicit business practices at its various locations, including the fabrication of documents,
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16 Robo-signing, surrogate signing, improper notarization, and the violation of security protocols
17 (*See, e.g.*, ¶¶56-103); (e) the Company created a culture which valued speed over accuracy and
18 Led to significant errors in the default services it provided (*see, e.g.*, ¶¶82-103); (f) such errors
19 Were knowingly concealed from clients, attorneys, and courts (*see, e.g.*, ¶¶99-103); (g) as a
20 Result of these illicit practices, Defendants caused significant numbers of deficient, erroneous,
21 And otherwise fraudulent documents to be filed with county recorders' offices and courts
22 Throughout the country (*see, e.g.*, ¶¶57-62, 76-77, 91, 100); and (h) as a result of Defendants'
23 Schemes, LPS' revenues and other financial metrics were artificially inflated (*see, e.g.*, ¶¶104-
24 105).
25

26 4. These false and misleading statements, individually and collectively,
27

28 **MOTION TO STAY AND DISMISS BASED ON FRAUD ON THE COURT**

1 Concealed LPS' true Financial circumstances and future business prospects, resulting in the
2 Stock being artificially inflated until, as indicated herein, the relevant truth about LPS was
3 Revealed. While each of these

4 5. Misrepresentations was independently fraudulent, they were all
5 Motivated by Defendants' Desire to artificially inflate LPS' stock price and the image of its
6 Future business prospects to Give the market the false notion that LPS' revenues were solely the
7 Result of record foreclosures And The Company's successful business model rather than the
8 Product of illicit practices that Included the improper collection of referral fees and fee-splitting
9 With attorneys, the fabrication Of Documents, "robo-signing," forging or surrogate signing,
10 Improper notarization of Documents, Violation of security protocols, and concealment of known
11 Mistakes from courts, Attorneys and Clients. Defendants' false and misleading statements had
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15 The intended effect and Caused, or were a substantial contributing cause of LPS' stock trading at
16 Artificially inflated Levels, reaching as high as \$44.38, throughout the Class Period.
17

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19 6. As stated above in Section VII, the true picture of the pervasive illicit
20 Practices at LPS and the Company's true financial condition was not revealed to the market all
21 At once. Rather, the true picture of LPS' illicit business practices began to emerge on April 16,
22 2009, after the Market closed, when the market learned that the Department of Justice was
23 Looking into the Legitimacy of the Company's business practices, including its relationships
24 With Attorneys. This Announcement caused the market to ask questions, causing the truth to
25 Start to Emerge, and the Risk caused by Defendants' fraud materialized slowly through a series
26 Of partial Revelations, Which cast doubt on the veracity of the Company's Class Period
27

28 **MOTION TO STAY AND DISMISS BASED ON FRAUD ON THE COURT**

1 Statements, for Example:

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 278. As a result of this series of partial revelations of LPS' business practices, doubt

11 was cast

12 On the veracity of Defendants' prior public statements. Additionally, these partial revelations

13 Were the natural and direct consequence (*i.e.*, materialization of the risk)of the fraud described

14

15

16

17 Herein. As a result of the market becoming increasingly aware of LPS' financial problems, the

18 Artificial inflation began to slowly fall out of LPS' stock price.

19 279. As further detailed above in Section VII, these stock drops would have been even

20 more

21 Significant had the full truth regarding LPS' illicit business practices been known. However, in

22 The face of market concerns regarding these practices, Defendants continued to make false and

23 Misleading statements in order to maintain an appearance of the Company's legitimacy and to

24 Artificially prop up LPS' stock price, for example:

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28 **MOTION TO STAY AND DISMISS BASED ON FRAUD ON THE COURT**

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12 280. These false and misleading statements and omissions, among others, had the
13 intended

14 Effect of preventing the market from learning the full truth and keeping the Company's stock
15 Price artificially inflated throughout the Period. As detailed in ¶¶250-252, truer pictures of LPS'
16 Illicit business practices were disclosed to the market through a series of disclosures between
17 October 1, 2010 and October 4, 2010, when the market learned that: (1) DocX employees had
18 Been creating illegal documents and forging the names of other employees; (2) the Company
19 Had issued problematic assignments of mortgage that were forged; (3) the Company was
20 Engaged in robo-signing of mortgage related documents; and (4) LPS was a prime actor in
21 Systemizing this fraud. When the market was provided with these revelations of the Company's
22 Illicit practices and truer financial condition, it was an indication to the market that Defendants'
23 Prior statements were false and misleading. As a result of the information revealed to the market
24 Between October 1, 2010 and October 4, 2010, which made its way into the market place, the
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28 **MOTION TO STAY AND DISMISS BASED ON FRAUD ON THE COURT**

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3 Market cast doubt on the veracity of Defendants' prior statements, causing LPS' stock to
4 Drop more than 13% as it fell from a close of \$31.48 on October 1, 2010 to close at \$27.31
5 On October 5, 2010, on abnormally high trading volume.

6 **281.** The market's negative reactions to LPS' revelations between October 1, 2010 and
7 October 4, 2010 are demonstrated in the stock chart below:
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17 **282.** The rapid decline in LPS' stock price following the disclosures between October
18 1, 2010
19 And October 4, 2010, was a direct and foreseeable consequence of the revelation of the falsity of
20 Defendants' misrepresentations and omissions to the market, as well as the Materialization of
21 The risk created by Defendants' fraud. Thus, these revelations of the truth and Materialization
22 Of the risk created by Defendants' fraud at the close of the , as well as the resulting clear market
23 Reaction, support a reasonable inference that the market understood that Defendants' prior
24 Public statements were false and misleading.
25

26 **283.** In sum, as the truth about Defendants' prior misrepresentations and concealments
27 was
28

MOTION TO STAY AND DISMISS BASED ON FRAUD ON THE COURT

1 Revealed, and the risk created by Defendants' fraud materialized, the Company's stock price
2
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4 Quickly sank, the artificial inflation came out of the stock, and Plaintiff suffered economic
5 Losses.

6 284. The various declines in LPS' stock price above had statistical significance to the
7
8 Disclosures alleged. Moreover, the timing and magnitude of LPS' stock price decline negates
9 Any inference that the losses suffered by Plaintiff were caused by changed market conditions,
10 Macro-economic or industry factors, or Company-specific facts unrelated to the Defendants'
11 Fraudulent conduct. This point is further evidenced by the chart below that demonstrates the
12 Clear divergence of LPS' stock price from its peer index as the revelation of the truth became
13 Known to the market:
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22 285. The economic loss, *i.e.*, damages, suffered by Plaintiff were a direct and
23 proximate result
24 Of Defendants' scheme and misrepresentations and omissions that artificially inflated LPS'
25 Stock price and the subsequent significant decline in the value of LPS' stock when the truth
26 Concerning Defendants' prior misrepresentations and fraudulent conduct entered the
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28 **MOTION TO STAY AND DISMISS BASED ON FRAUD ON THE COURT**

1 Marketplace.

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4 **Emergency Original Petition for Wrongful Foreclosure**

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6 **XI. NO SAFE HARBOR**

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8 286. The federal statutory safe harbor providing for forward-looking statements under
9 certain

10 Circumstances do not apply to any of the allegedly false statements pleaded in this complaint.

11 Many of the specific statements pleaded herein were not identified as “forward-looking
12 Statements” when made. To the extent there were any forward-looking statements, there were

13 No meaningful cautionary statements identifying important factors that could cause actual
14 Results to differ materially from those in the purportedly forward-looking statements.

15 Alternatively, to the extent that the statutory safe harbor does apply to any forward-looking
16 Statements pleaded herein, Defendants are liable for those false forward-looking statements

17 Because, at the time each of those forward-looking statements was made, the particular speaker
18 Knew that the particular forward-looking statement was false and/or the forward-looking

19 Statement was authorized and/or approved by an executive officer of LPS who knew that those
20 Statements were false when made. Moreover, to the extent those Defendants issued any

21 Disclosures designed to “warn” or “caution” investors of certain “risks,” those disclosures
22 Were also false and misleading since they did not disclose that Defendants were actually

23 Engaging in the very actions about which they purportedly warned and/or had actual
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28 **MOTION TO STAY AND DISMISS BASED ON FRAUD ON THE COURT**

1 Knowledge of material adverse facts undermining such disclosures.

2 287. In connection with this inquiry, the UST sought discovery of Lender
3 Processing Services, Inc., flk/a Fidelity National Intonation Services, Inc. 1 ("LPS" or
4

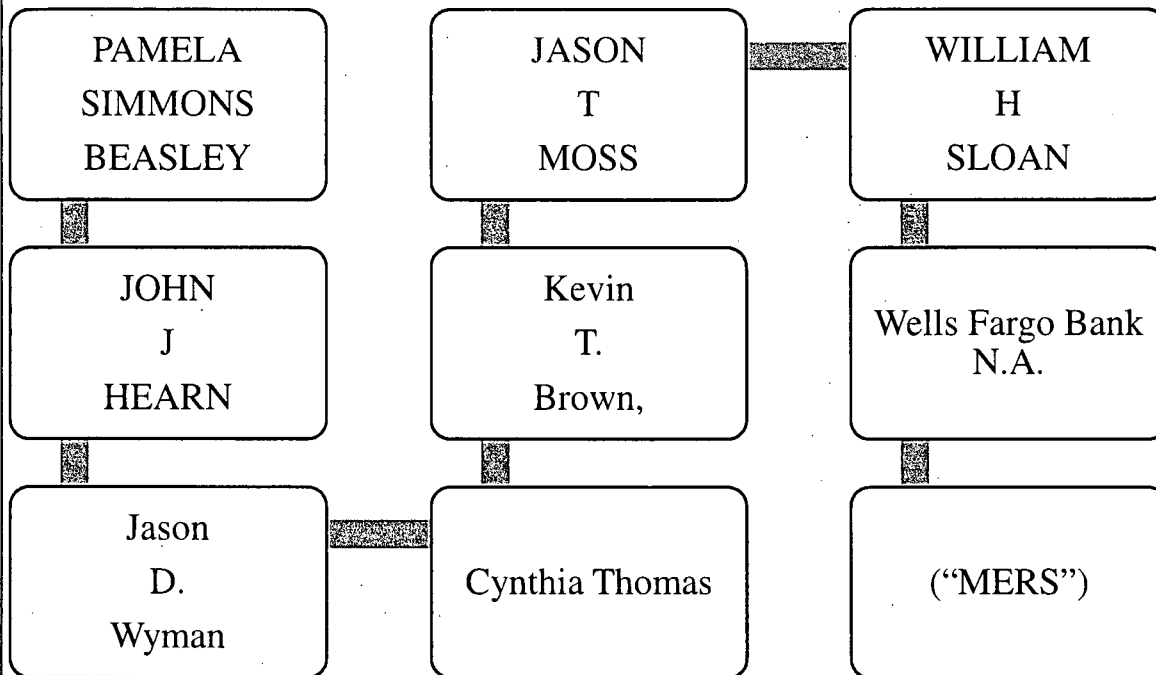
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6 **Emergency Original Petition for Wrongful Foreclosure**
7 "Fidelity"). LPS describes itself as "a leading provider of integrated technology and
8 Outsourced services

9
10 44. On July 2, 2008, LPS was spun-off from Fidelity through a tax free distribution of
11 All of its shares to Fidelity shareholders. Form 10-Q for Lender Processing Services, Inc.
12 http://biz.yahoo.com/e/080813/lps_10-q.html. Distribution, Upon the Distribution, FIS's
13 shareholders received one-half share of the Common Stock for every share of FIS common stock
14 held as of the close of business on June 24, 2008. FIS's shareholders collectively received 100%
15 of the Common Stock of the Registrant, which is now a stand-alone public company trading
16 under the symbol "LPS"

17
18 Figure 3: Fidelity's "FIS's shareholders collectively received 100% of the Common Stock under
19 The symbol "LPS"

20
21 **"PLAINTIFF WOULD LIKE THIS COURT TO MEET LPS"**
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Making them 100% owners of ("LPS");

45. LPS has stated in a filing with the Securities& Exchange Commission that:

LPS represents that 39 of the 50 largest banks in the United States based on 2007 ratings

Use its services. Its technology solutions include its mortgage processing system (the "MSP" Which Processes over 50% of all residential mortgages loans by dollar volume. Its outsourcing Services include "the default management services, which are used by mortgage lenders and servicers to attorneys, trustees and real estate professionals."5 Reduce the expense of managing Defaulted loans.....". As stated earlier, LPS' MSP software program has been highly profitable And hugely successful as a mortgage-servicing platform. According to LPS' own SEC filings, Half of all loans by volume in the United States are managed on the **MSP software program**

Pursuant to Art. V, § 4 of the South Carolina Constitution,
Rule 402(k), the Oath of Office for Attorneys

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1 288. I do solemnly swear (or affirm) that:

2
3 I am duly qualified, according to the Constitution of this State, to exercise the duties
4 of the office to which I have been appointed, and that I will, to the best of my ability,
5 discharge those duties and will preserve, protect and defend the Constitution of this
6 State and of the United States;

7 I will maintain the respect and courtesy due to courts of justice, judicial officers, and
8 those who assist them;

9 To my clients, I pledge faithfulness, competence, diligence, good judgment and
10 prompt communication;

11 To opposing parties and their counsel, I pledge fairness, integrity, and civility, not
12 only in court, but also in all written and oral communications;

13 I will not pursue or maintain any suit or proceeding which appears to me to be unjust
14 nor maintain any defenses except those I believe to be honestly debatable under the
15 law of the land, but this obligation shall not prevent me from defending a person
16 charged with a crime;

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18 I will employ for the purpose of maintaining the causes confided to me only such
19 means as are consistent with trust and honor and the principles of professionalism, and
20 will never seek to mislead an opposing party, the judge or jury by a false statement of
21 fact or law;

22 I will respect and preserve inviolate the confidences of my clients, and will accept no
23 compensation in connection with a client's business except from the client or with the
24 client's knowledge and approval;

25 I will maintain the dignity of the legal system and advance no fact prejudicial to the
26 honor or reputation of a party or witness, unless required by the justice of the cause
27 with which I am charged;

28 I will assist the defenseless or oppressed by ensuring that justice is available to all
citizens and will not delay any person's cause for profit or malice;

MOTION TO STAY AND DISMISS BASED ON FRAUD ON THE COURT

[So help me God.]

DISQUALIFICATION OWN 100% OF ("LPS")

2 , CURTIS SHEPHERD the Plaintiff /Counterclaimants, moves the Court for the mistrial, or in lieu, disqualification of Defendant PAMELA SIMMONS BEASLEY and , JASON T. MOSS, John J. Hearn , Jason D. Wyman , Kevin T. Brown, along with disqualification of plaintiff's attorney of record, William H. Sloan, from any continued handling of the case identified above and hereon; and being duly sworn, deposed and Says:

**THE PLAINTIFF's CONTRACT WITH FIDELITY/ LPS VIOLATES
PLAINTIFF CONSTITUTIONAL RIGHTS**

- Wells Fargo Bank, NA **CONTRACT WITH FIDELITY/ LPS VIOLATES
PLAINTIFF CONSTITUTIONAL RIGHTS**
- Rogers Townsend & Thomas, PC **CONTRACT WITH FIDELITY/ LPS VIOLATES
PLAINTIFF CONSTITUTIONAL RIGHTS**
- MERS Systems, Inc. **CONTRACT WITH FIDELITY/ LPS VIOLATES
PLAINTIFF CONSTITUTIONAL RIGHTS**
- Pamela Simmons Beasley **CONTRACT WITH FIDELITY/ LPS VIOLATES
PLAINTIFF CONSTITUTIONAL RIGHTS**

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- William H. Sloan **CONTRACT WITH FIDELITY/ LPS VIOLATES
PLAINTIFF CONSTITUTIONAL RIGHTS**
- Jason T. Moss **CONTRACT WITH FIDELITY/ LPS VIOLATES
PLAINTIFF CONSTITUTIONAL RIGHTS**
- John J. Hearn **CONTRACT WITH FIDELITY/ LPS VIOLATES
PLAINTIFF CONSTITUTIONAL RIGHTS**
- Jason D. Wyman **CONTRACT WITH FIDELITY/ LPS VIOLATES
PLAINTIFF CONSTITUTIONAL RIGHTS**
- Kevin T. Brown **CONTRACT WITH FIDELITY/ LPS VIOLATES
PLAINTIFF CONSTITUTIONAL RIGHTS**
- Cynthia Thomas

MOTION TO STAY AND DISMISS BASED ON FRAUD ON THE COURT

289. The fees the Fidelity-controlled law firms charge in Chapter 13 bankruptcies are inflated

By 25% to 50%. The law firms, like Rogers Townsend & Thomas, PC , kick back the extra to Fidelity as Part of Fidelity's nationwide "Network Agreement" governing its relationships with These laws Firms. Again, Fidelity keeps its role, as well as the kickback, hidden from the courts As a matter Of systematic policy

290. Fidelity's conduct is criminal under 18 U.S.C. § 155, which provides that any party

In interest commits a crime when that entity or its representative "knowingly and fraudulently Enters into an agreement" for the purpose of fixing the fees or other

291. compensation to be paid to any party in interest or to any attorney for any party in Interest For services rendered in connection therewith, from the assets of the estate. "Under Section 155, this conduct is punishable by both fines and prison time.

292. Fidelity's conduct places its "Network" attorneys in violation of multiple ethical rules

Forbidding fee-splitting. For example, the State Bar Rules provide that "[a] lawyer . . Shall not share or promise to share legal fees with a non- lawyer," with exceptions

Inapplicable here. See SC. R. Prof. Cond. 5.04(a)(b).

Rule 5.4 Professional Independence of a Lawyer

- i. A lawyer or law firm shall not share legal fees with a Non-lawyer,, except that:
- ii. A lawyer shall not form a partnership with a non-lawyer if any of the activities of the partnership consist of the practice of law
- iii. WELLS FARGOBANK, NA, Foreclosure Mill: Fidelity National Foreclosure solutions, Welcomes the following CLIENT and firms to the Fidelity PARTNERSHIP from April May, June, and July. 2006, VOL.2

MOTION TO STAY AND DISMISS BASED ON FRAUD ON THE COURT