IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

2012 JUL 23 P 3:17

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MICHAEL YEAGER
6748 Canterbury Road
Madison, OH 44057

Plaintiffs,

vs.

LENDER PROCESSING SERVICES, INC.
601 Riverside Avenue
Jacksonville, FL 32204

-and-

LPS DEFAULT SOLUTIONS
601 Riverside Avenue
Jacksonville, FL 32204

Case No:

Judge: MICHAEL P DONNELLY

CV 12 787639

CLASS ACTION COMPLAINT FOR FRAUD, VIOLATIONS OF THE OHIO CONSUMER SALES PRACTICES ACT, CONSPIRACY TO COMMIT FRAUD, SLANDER OF TITLE, AND INJUNCTIVE RELIEF

JURY DEMAND ENDORSED HEREON

-and-

DOCX, LLC
601 Riverside Avenue
Jacksonville, FL 32204

-and-

FIDELITY NATIONAL INFORMATION SERVICES, INC.
601 Riverside Avenue
Jacksonville, FL 32204

-and-

AMERICAN HOME MORTGAGE SERVICING, INC.
1525 S. Belt Line Road
Coppell, TX 75019

-and-

LERNER, SAMPSON & ROTHFUSS
Terminal Tower
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Cleveland, OH44113-2201

-and-

REIMER, ARNOVITZ, CHERNEK & JEFFREY CO, L.P.A.
2450 Edison Blvd.
Twinsburg, OH 44087

-and-

MANLEY DEAS KOCHALSKI LLC
113 W St. Clair Ave.
Cleveland, OH44113

Defendants.

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I. NATURE OF THE CASE

1. Plaintiffs Linda A. Clark, Jeff Doehner, Julie Doehner, Nina Lowery, John Whiteman, Laura Yeager and Michael Yeager (collectively, "Plaintiffs") bring this action against defendants Lender Processing Services, Inc. ("LPS"), LPS Default Solutions, Inc. ("LPS Default Solutions"), DocX, LLC ("DocX"), Fidelity National Information Services, Inc. ("Fidelity"), American Home Mortgage Servicing, Inc. ("AHMSI"), Reimer, Arnovitz, Chernek & Jeffrey, Co. LPA ("RAC&J"), Lerner, Sampson & Rothfuss LPA ("LS&R") and Manley Deas Kochalski LLC ("MDK") (collectively "Defendants") on behalf of a proposed class consisting of:

> All Ohio citizens who were (a) defendants in judicial foreclosure actions on first lien mortgages on their homes that were purportedly held by securitization trusts, and that were knowingly initiated and prosecuted by Defendants on behalf of parties that lacked legal standing to do so, and (b) who were damaged by Defendants' abusive foreclosure practices, including: (i) preparing, executing, and notarizing fraudulent court documents and assignments of mortgages and other property records that were used to initiate and prosecute such foreclosures, and (ii) imposing inflated, unfair, unreasonable and/or fabricated fees for "default management services" (the "Class").

2. Three categories of defendants acted in concert and conspired in furtherance of the fraudulent scheme to generate enormous profits from default servicing fees by knowingly initiating foreclosure actions on behalf of entities that lacked legal standing to bring such actions.

a. The first category is comprised of defendant AHMSI, which, on behalf of loan holders, services residential loans, including collecting mortgage, tax, and insurance payments from homeowners. AHMSI entered into contracts with

defendants Fidelity, LPS and DocX for them to service loans which had defaulted (known as "default servicing").

b. The second category is comprised of defendants LPS, its predecessor Fidelity, and its subsidiaries LPS Default Solutions and DocX, which are vendors or sub-servicers to the vast majority of national mortgage servicers to manage all default servicing for those servicers. LPS alone handles more than half of the nation's foreclosures.

c. The third category is comprised of defendants RAC&J, LS&R and MDK, which are law firms that specialize in prosecuting a high volume of foreclosure cases, and are commonly known as "foreclosure mills." Defendants RAC&J, LS&R and MDK each entered into contracts with LPS (and its predecessor Fidelity) called a "Network Agreement." The Network Agreement requires these foreclosure mills to pay *quid pro quo* consideration to LPS for referrals of foreclosure cases and other default related matters and allows LPS to exercise control of its network firms. These foreclosure mills were not only retained by defendant LPS, they were also supervised and directed by LPS, and knowingly used forged and fabricated documents created by or at the direction of LPS and/or its subsidiaries.

3. In the recent housing boom, loans to purchase or refinance homes were generated at a rapid pace. In each case, the borrower executed a note promising the repay the loan on stated terms, and a security instrument such as a mortgage or deed of trust, which secures the loan repayment by giving its holder the right to foreclose on the property in case of non-payment of

the note.[1] In order to foreclose on a home in Ohio, a foreclosing entity must establish ownership of the note and the mortgage securing the debt at issue.

4. In most cases, the original lender did not retain ownership of the loan, but instead sold the loan to another entity. Often the loan originator sold the loan to an aggregator, which in turn sold it to a sponsor, which pooled the loan with other loans, and in turn sold them to a depositor, which in turn sold them to a trust or a trustee to be held for the benefit of the trust. The trust issued and sold securities, usually bonds or certificates, to raise money to pay for the loans. The securities, which earn income from repayment of the loan notes, are called "residential mortgage backed securities" ("RMBS"). Those loans not sold to the Federal National Mortgage Association ("Fannie Mae"), the Federal Home Loan Mortgage Corporation ("Freddie Mac"), or another government entity are known as "private label" securitizations.

5. These private-label securitizations of mortgages are governed by a series of contracts including Mortgage Loan Purchase Agreements ("MLPA"), Pooling and Servicing Agreements ("PSA"), Custodial Agreements and, in some cases, Trust Indentures between the depositors, servicers and the trusts (collectively, the "governing documents"). These governing documents establish specific terms, which vary by agreement from the provisions of the Uniform Commercial Code and state contract law, that would otherwise apply to the transactions.

6. The vast majority of PSAs provide that in connection with the transfer and assignment of each mortgage loan, the depositor must deliver, within the specified cut off date, to the trustee or trust custodian, the following documents:

a. the original note endorsed in blank, without recourse, with all intervening endorsements showing a complete chain of endorsement;

[1] For purposes of this Complaint, deeds of trust and mortgages shall be referred to collectively as "mortgages".

b. the original mortgage or certified copy thereof evidencing its assignment to Mortgage Electronic Registration System ("MERS"), a privately held mortgage registry.[2]

7. PSAs contain strict cut-off dates for the notes and corresponding mortgages to be delivered to the trust or its designated custodian. With limited exceptions, these deliveries are normally required to be made no later than 90 days after the closing of the trust. The strict cut-off date is designed to ensure that the trust will qualify for pass-through tax treatment (*i.e.*, the investors in the mortgage-backed securities pay the taxes rather than the trust), which is a material feature of mortgage-backed securities.

8. However, as was recently brought to light in the media, in a lawsuit filed by the Nevada Attorney General, by sworn testimony from industry insiders, and in lawsuits brought by investors, **in a large number of cases the notes and mortgages were neither timely delivered nor delivered in properly endorsed form to the trust, the trustee or its designated custodian.**

9. The failure to timely and properly deliver the notes and mortgages cannot be remedied retroactively. The trustees of the securitization trusts may not violate the terms of their appointment by unlawfully waiving the foregoing material provisions of the PSAs. Accordingly, without timely and proper delivery of the subject notes and mortgages, the securitization trusts and their trustees do not lawfully own and hold the notes and mortgages, and can never own such notes and mortgages.

10. The Defendants knew that unless their clients owned both the note and the mortgage, they would not have standing to foreclose. They also knew that unless they fabricated

[2] These mortgage assignments are required to be in "recordable form" (*i.e.*, legally sufficient to allow the trustee to foreclose in the event of default).

and submitted documentation (typically mortgage assignments) purporting to establish standing, they could not effect foreclosures on behalf of their clients, and could not profit thereby.

11. The Defendants have engaged in a widespread conspiracy to deceive the Ohio courts and borrowers by fabricating thousands of mortgage assignments. **These fraudulent documents purported to establish the required intervening note endorsements and transfers of the mortgages to the trusts, thereby giving the illusion of "standing".** If these transfers had actually occurred on the dates the documents were fabricated, they would have been void inasmuch as they were not made pursuant to the terms of the governing documents and the Trustees were not permitted to accept late and out of time assignments.

12. In furtherance of this scheme to defraud, from at least 2006 until the present, Defendants have knowingly and intentionally prepared and filed or caused to be filed these fraudulent mortgage assignments and other mortgage documents with courts and county recorder of deed's offices across the country, including in Ohio, and have produced them to borrowers across the nation, including in Ohio.

13. From at least 2006 to the present, LPS and its network of foreclosure mill law firms have used these fraudulent mortgage assignments to conceal the fact that the trusts, which purport to hold the notes and mortgages, are missing critical documents, namely, properly endorsed notes and valid mortgage assignments that were supposed to have been delivered to the trusts within 90 days of the closing of the trust.

14. These note endorsements and mortgage assignments were materially false and intentionally misrepresented that Defendants' clients had standing to foreclose when they did not. Defendants knew or should have known of the falsity of the representations in these documents, yet Defendants used these fabricated documents to foreclose on Ohio homeowners,

with the intent to deceive borrowers and the courts who justifiably believed that these fabricated and forged documents were valid.

15. Sadly, many of the Ohio homeowners who comprise the Class were unaware that the documents were forged and that the foreclosing parties lacked standing. Members of the Class lacked the resources to discover this on their own or to secure competent legal counsel to discover this and defend them against foreclosures. As a result of the conspiracy described herein, these homeowners have lost their homes in foreclosures initiated and prosecuted by Defendants. These homeowners were unaware of the fact that LPS's clients were not the real parties in interest and lacked legal standing to prosecute, let alone prevail in a foreclosure proceeding.

16. Moreover, thousands of Ohio homeowners have been wrongfully required to defend frivolous foreclosure actions and have incurred substantial legal fees and inflated and/or fabricated foreclosure-related fees charged by mortgage servicers when the plaintiff lacked the standing to institute the foreclosure proceedings against them in the first instance. The fraudulent, overstated, unfair, and unreasonable foreclosure-related fees obtained by Defendants from each of the Plaintiffs and other financially distressed homeowners include: attorneys' fees, title search fees, property appraisal fees (including so-called "broker price opinions" or "BPOs"), property inspection and/or maintenance fees, and unspecified and undocumented "foreclosure fees and costs." Such fees were not authorized by contract or otherwise permitted by law.

17. These fraudulent schemes have been perpetrated on an institutionalized basis through the knowing participation and coordination of each Defendant.

II. JURISDICTION AND VENUE

18. This Court has original jurisdiction pursuant to § 4.04(B) of the Ohio Constitution.

19. Venue is proper in Cuyahoga County pursuant to Civil Rule 3(B), as it is the County in which all or part of the claim for relief arose and real property at issue in this action is situated in this County, Defendant LS&R files foreclosure complaints in Cuyahoga County and has an office located in Cuyahoga County, Defendant MDK has an office located in Cuyahoga County, files foreclosure complaints in Cuyahoga County and won an award from Fidelity for being the fastest to foreclose in Cuyahoga County, Defendant RAC&J files numerous foreclosure complaints in Cuyahoga County, including cases where Defendant AHMSI is the servicer, Defendants LPS and DOCX executed assignments of mortgage that were recorded in Cuyahoga County, Defendants Fidelity and LPS Defaults Solutions are involved in foreclosure cases in Cuyahoga County, and venue is appropriate under Civil Rule 3(E) because "[i]n any action, brought by one or more plaintiffs against one or more defendants involving one or more claims for relief, the forum shall be deemed a proper forum, and venue in the forum shall be proper, if the venue is proper as to any one party other than a nominal party, or as to any one claim for relief."

III. PARTIES

A. Plaintiffs

20. Plaintiff Linda A. Clark is an Ohio resident who owns real property in Cuyahoga County that was the subject of a foreclosure initiated and prosecuted by some of the defendants, including LPS and LS&R.

21. Plaintiffs Jeff Doehner and Julie Doehner are Ohio residents who own real property in Cuyahoga County that was the subject of a foreclosure initiated and prosecuted by some of the defendants, including LPS, DocX, AMHSI, and LS&R.

22. Plaintiff Nina Lowery is an Ohio resident who owns real property in Mahoning County that was the subject of a foreclosure initiated and prosecuted by some of the defendants, including LPS and LS&R.

23. Plaintiff John Whiteman is an Ohio resident who owns real property in Franklin County that was the subject of a foreclosure initiated and prosecuted by some of the defendants, including LPS, DocX, AHMSI, and MDK.

24. Plaintiffs Laura and Michael Yeager are Ohio residents who own real property in Lake County, Ohio that was the subject of a foreclosure action initiated and prosecuted by some of the defendants, including LPS and RAC&J.

B. Defendants

25. Defendant Lender Processing Services, Inc. ("LPS") is a Delaware corporation that maintains its principal place of business at 601 Riverside Avenue, Jacksonville, Florida 32204. LPS's stock is publicly traded on the New York Stock Exchange under the ticker symbol LPS.

26. Defendant Fidelity National Information Services, Inc. ("Fidelity"), a Georgia corporation, is a provider of technology and services to the financial services industry. Fidelity maintains its principal place of business at 601 Riverside Avenue, Jacksonville, Florida 32204. Fidelity's stock is publicly traded on the New York Stock Exchange under the ticker symbol FIS. Fidelity is the predecessor to and former corporate parent of LPS. Fidelity spun-off the majority of its LPS segment as a separate publicly traded company on or about July 2, 2008.

27. Defendant LPS Default Solutions, Inc. ("LPS Default Solutions") is a Delaware corporation that is a subsidiary of LPS. LPS Default Solutions maintains its principal place of business at 601 Riverside Avenue, Jacksonville, Florida 32204. Fidelity National Foreclosure

Solutions and FIS Foreclosure Solutions, Inc. were predecessors of LPS Default Solutions. In October 2007, Fidelity National Foreclosure Solutions changed its name to FIS Foreclosure Solutions, Inc. FIS Foreclosure Solutions was renamed LPS Default Solutions, Inc. after LPS, Inc. was spun off from Fidelity in July 2008.

28. Defendant DocX, LLC, a/k/a Document Solutions ("DocX"), was a Georgia limited liability company that, at all times relevant to this action, was a subsidiary of LPS. DocX maintained its principal place of business in Alpharetta, Georgia, where it employed people to fabricate mortgage documents for lenders and mortgage servicing companies, including affidavits and mortgage assignments.

29. Defendant American Home Mortgage Servicing, Inc. ("AHMSI") is a privately-held Delaware corporation that maintains its principal place of business at 1525 S. Belt Line Road, Coppell, Texas 75019. AHMSI services approximately $74 billion in residential mortgages, primarily for securitization trusts. AHMSI uses LPS network attorneys and LPS manufactured documents to initiate and prosecute foreclosures on behalf of clients who lack standing to foreclose. AHMSI is licensed to do business in Ohio as a second mortgage lender, License SM.501517.000, by the Ohio Department of Commerce.

30. Defendant Lerner, Sampson & Rothfuss LPA ("LS&R") is a law firm based principally in the State of Ohio which represents creditors in Ohio in foreclosure matters, including the foreclosure action against Plaintiffs Clark, the Doehners and Lowery. At all times relevant to this action, defendant LPS had a Network Agreement with defendant LS&R.

31. Defendant Manley Deas Kochalski LLC ("MDK") is a law firm based principally in the State of Ohio which represents creditors in Ohio in foreclosure matters, including the

foreclosure action against Plaintiff John Whiteman. At all times relevant to this action, defendant LPS had a Network Agreement with defendant MDK.

32. Defendant Reimer, Arnovitz, Chernek & Jeffrey, Co. LPA ("RAC&J") is a law firm based principally in the State of Ohio, which represents creditors in Ohio State in foreclosure matters, including the foreclosure action against Plaintiffs Laura and Michael Yeager. At all times relevant to this action, defendant LPS had a Network Agreement with defendant RAC&J.

IV. SUBSTANTIVE ALLEGATIONS

A. The Foreclosure Crisis

33. Since mid-2007 around eight million homes entered foreclosure in the United States, and over three million borrowers lost their homes in foreclosure.[3] As of June 30, 2010, the Mortgage Bankers Association reported that 4.57% of 1-4 family residential mortgage loans (roughly 2.5 million loans) were in foreclosure, a rate more than quadruple historical averages. Additionally, 9.85% of mortgages (roughly 5 million loans) were at least a month delinquent.[4]

34. For the third quarter of 2010, foreclosure filings, default notices, scheduled auctions and bank repossessions were reported on 930,437 properties. One in every 139 U.S. housing units received a foreclosure filing in this quarter.[5]

35. For the fourth quarter of 2010, the share of mortgages that were delinquent was 8.2 percent, and the share of mortgages that were in foreclosure was 4.6 percent – then the highest share on the Mortgage Bankers Association's records, which date back to 1979.[6]

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[3] HOPE Now Data Reports.

[4] Mortgage Bankers Association, National Delinquency Survey.

[5] Reality Trac Staff, "Foreclosure Activity Increases 4% in Third Quarter" (October 14, 2010), avail. at http://www.realtytrac.com/content/press-releases/q3-2010-and-september-2010-foreclosure-reports-6108.

36. For the first quarter of 2011, the share of mortgages that were delinquent was 8.32 percent, an increase of seven basis points from 8.25 percent in the fourth quarter of 2010, and the share of mortgages that were in foreclosure as of the end of the first quarter of 2011 was 4.52 percent.[7]

37. Ohio has been has been among the states hardest hit by this crisis. In March 2012, a new foreclosure complaint was filed against 1 out of every 609 housing units in Ohio. In Cuyahoga County the problem is more severe with a new foreclosure filing for 1 out of every 417 housing units. *See* http://www.realtytrac.com/trendcenter/oh-trend.html.

38. Increased foreclosures have a detrimental effect not just on the borrowers who lose their homes, and face homelessness, but also on the surrounding neighborhoods that suffer decreased property values and municipalities that lose tax revenue. As the Pew Charitable Trust stated in 2009, "[f]oreclosure can have a devastating impact on homeowners and their families. It can ruin their credit for years, adversely affect their jobs and children's schooling, and take away what for many Americans is their principal investment opportunity and chance to get ahead."[8]

B. To Have Standing to Foreclose in Ohio, a Party Must Hold Both the Promissory Note and the Security Instrument (*i.e.*, the Mortgage)

39. In the United States, home purchases are typically financed by mortgages. The mortgage contract consists of two documents, a promissory note (the "note") and a security instrument (the "mortgage"). The note contains the borrower's promise to repay the money

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[6] *Id.*

[7] *Id.*

[8] *See* Defaulting on the American Dream, Pew Charitable Trust, April 2009, at 11-12, www.pewcenteronthestates.org/uploadedFiles/PCS_DefaultingOnTheDream_Report_FINAL041508_01.pdf.

loaned. The mortgage is the document that provides the lender a security interest in the home and gives the lender the right to foreclose on the real property in the event of a default on the note.

40. Historically, the note and the mortgage traveled together. If an originating lender decided to sell a mortgage loan, that lender would endorse and physically transfer the note to a new holder, and assign the mortgage or other security instrument to that entity as well. The parties would then record the assignment with the local county recorder, giving record notice to the homeowner and all the world of who held the mortgage.[9]

41. When the note is severed from the mortgage (*i.e.*, the security instrument), "**the Note becomes, as a practical matter, unsecured.**" Restatement (Third) of Property (Mortgages) § 5.4 comment a. (1997) (emphasis added). A party holding only the note lacks the power to foreclose because it lacks the security, and a party holding only the security instrument suffers no default when the borrower fails to make a required payment on the note because only the holder of the note is entitled to payment on it.

42. To bring any lawsuit, including a foreclosure action, the plaintiff must have legal standing, meaning it must have a direct interest in the outcome of the litigation. In the case of a foreclosure action in Ohio, the real party in interest is the current holder of the note and mortgage. Courts in Ohio have specifically recognized the need for foreclosure plaintiffs to submit a copy of the note and assignment of mortgage to prove standing.

43. Due to widespread defects in the chain of title in mortgage securitizations, described below, mortgage servicers and the foreclosure mill law firms retained by them have resorted to creating and using false and fabricated documents (including false lost note affidavits, false endorsements and allonges, backdated mortgage assignments, and counterfeit notes,

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[9] *See* Christopher L. Peterson, Foreclosure, *Subprime Mortgage Lending, and the Mortgage Electronic Registration System*, 78 U. CIN. L. REV. 1359, 1362 (2009-10).

mortgages, and assignments), as purported evidence that the entity bringing the foreclosure action has standing to foreclose. Defendants LPS, LPS Default Solutions, and DocX provide entities who wish to foreclose fabricated mortgage documents that falsely represent that that they have ownership of the note and mortgage and thus standing.

44. Until relatively recently, such fraudulent methods were rarely discovered. Even after the widespread publication of information regarding rampant "robo-signing" and the creation of fictitious documents, standing to sue is rarely challenged by borrowers because most borrowers cannot afford an attorney, and therefore the norm in foreclosure cases is a default judgment. In most cases, only the lender's attorney appears, and judges routinely dispatch dozens of foreclosure cases in a sitting. "**Homeowners in foreclosure actions are among the most vulnerable of defendants, the least able to insist up on and vindicate their rights, and accordingly the ones most susceptible to abuse of legal process.**"[10]

C. Mortgage Securitizations

45. During the period of time relevant to this case, most residential mortgages in the United States were resold, pooled and securitized. In recent years, over 90% of mortgages originated have been securitized. *See* Levitin Testimony, *supra*.

46. Securitization is a financing method involving the issuance of securities against a dedicated cash flow stream, such as mortgage payments, which are isolated from other creditors' claims. Securitization allows the financing institutions that originate the mortgage loans to avoid the credit risk, interest rate risk, and liquidity risk associated with holding the mortgage loans on their own books.

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[10] Written Testimony of Adam J. Levitin, Associate Professor of Law, Georgetown University Law Center, Before the Senate Committee on Banking, Housing, and Urban Affairs, "Problems in Mortgage Servicing from Modification to Foreclosure" (Nov. 16, 2010) (emphasis added) ("Levitin Testimony").

47. Until around 2000, government-sponsored enterprises ("GSEs") Federal National Mortgage Association ("Fannie Mae") and Federal Home Loan Mortgage Corporation ("Freddie Mac") securitized most first lien mortgages. Beginning in 2000, non-bank lending companies like New Century and Countrywide created a market for so-called "private-label" securitizations. Since the GSEs controlled the market for securitizing prime credit quality mortgages that conformed to stringent GSE guidelines, these companies targeted sub-prime and other non-conforming loans that could not be securitized by GSEs.

48. From 2002-2008, institutional investors proved to have huge appetite for private-label residential mortgage-backed securities ("RMBS"). In order to satisfy the demand for these RMBS, there was a frenzy to issue and sell as many RMBS as possible and the issuers cut corners to do so. As explained below, shortcuts taken by the RMBS issuers, including rampant failures to comply with the securitization trusts' governing documents, created chain of title defects that cannot be remedied after the fact.

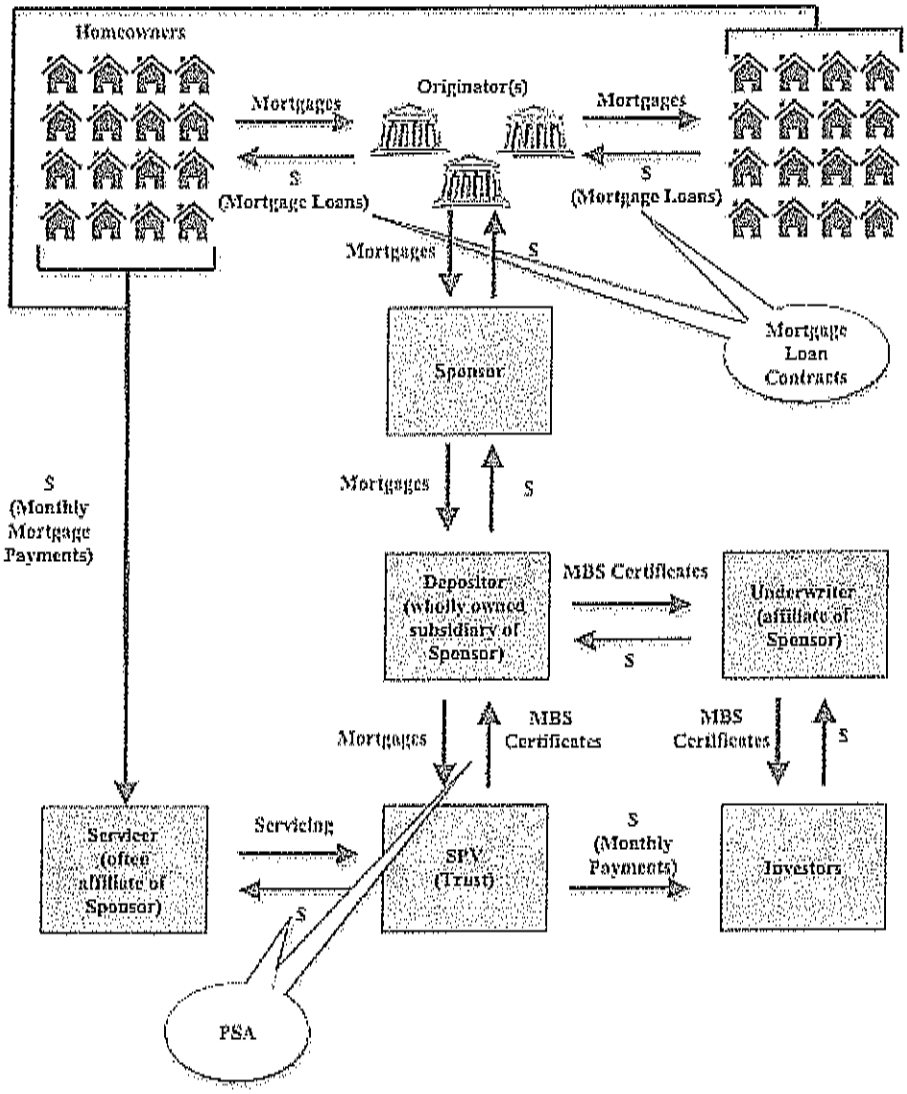
49. In order to securitize mortgages, promissory notes (the document that creates the indebtedness which the borrower is obligated to repay) had to change hands 4 or 5 times to reach their ultimate destination, a trust. Typically, the note would start with the mortgage ***originator***, which is often a small entity that is affiliated with a larger financial institution known as a ***sponsor***. Within 7 days of closing of the loan, the originator sells the note to the sponsor, who aggregates a large pool of promissory notes. From there, the pool of notes is transferred to a ***depositor***, which is a special-purpose subsidiary of a large bank that has no assets or liabilities. This is done to segregate the loans from the sponsor's assets and liabilities. Next, the depositor sells the loans to a passive, specially created, single-purpose vehicle ("SPV"), typically a Real Estate Mortgage Investment Conduit ("REMIC") trust. **Each of these transfers must be done in**

strict compliance with the terms of the governing documents in order for the SPV/trust to obtain valid ownership of the mortgage loans comprising the pool for that offering. Finally, the SPV/trust issues certificated securities (typically bonds or certificates) to raise the funds to pay the depositor for the loans.

50. The purpose of a REMIC trust is to accept investments from large institutional investors such as pension plans and sovereign wealth funds, who comprised much of the market for RMBS. Such investors seek to purchase AAA-rated securities issued by these REMIC trusts. The REMIC trust serves as a pass through for tax purposes. In other words, the investors pay the taxes on the stream of income generated by the notes held by the trust instead of the trust paying the taxes. Critically, **in order to qualify as a REMIC trust the depositor must deliver the notes to the custodian of the trust by a predetermined cut-off date or the trust will not be eligible for pass through treatment for tax purposes.** *See* Levitin Testimony. However, this rarely occurred.

51. The figure below depicts a typical private-label securitization structure.

Typical Private-Label Mortgage Securitization Structure



52. With the increase in securitization of mortgage loans, the financial services industry sought to maximize profitability and flexibility by not filing mortgage assignments with local county recorders.[11] Rather, in order to facilitate tracking ownership of mortgage loans and

[11] Peterson, 78 U. CIN. L. REV. at 1368-69.

avoid executing and recording assignments of the mortgages, the mortgage industry created Mortgage Electronic Registration Systems, Inc. ("MERS").[12]

53. The Georgia Supreme Court has described the MERS system as follows:

> MERS, which began operating in 1997, is a private company created by the mortgage banking industry for the purpose of establishing a centralized, electronic system for registering the assignments and sales of residential mortgages, with the goal being the elimination of costly paperwork every time a loan is sold.... Under the MERS system, the borrower and the original lender name MERS as the grantee of any instrument designed to secure the mortgage loan. The security instrument is then recorded in the local land records, and the original lender registers the original loan on MERS's electronic system. Thereafter, all sales or assignments of the mortgage loan are accomplished electronically under the MERS system.

Taylor, Bean & Whitaker v. Brown, 583 S.E.2d 844, 845 n.1 (Ga. 2003) (citations omitted).

54. MERS itself has very few employees, none of whom is responsible for registering the loans on its system. Rather, each "member" of MERS is responsible for submitting reports of loan transactions to the MERS central registry.

55. Many of the first lien mortgages that were originated at times relevant to this case designated MERS as original mortgagee — so-called "MOM" loans. This caused the note to be severed from the mortgage because the mortgagee (MERS) was not the same entity that owned the note. MERS had no claim to the note, but MERS was the "nominee" for the mortgagee. Thus, in a MOM loan the mortgage does not follow the note.

D. Widespread Failure to Ensure Legally Effective Transfers and Assignments of Notes and Mortgages to the Trusts

56. Plaintiffs in many foreclosure actions throughout the country, including those represented by Defendants, lacked standing to foreclose because of their failure to comply with the requirements of the governing documents and ensure effective transfers for the notes and mortgages to the trusts.

[12] *Id.* at 1369.

57. The legal structure of the securitization process was carefully designed to insure that that the mortgage pools owned by the SPV/trusts are bankruptcy remote (as explained below) and qualify for favorable REMIC tax treatment. These two features of the structure were prerequisites for the bond ratings and legal opinions necessary for the bond offerings to go forward. Cutting corners may improve a securitization's economic efficiency, but it undermines its legal viability. *See* Levitin Testimony.

58. The governing documents, normally PSAs, create a series of steps which must be taken to move both the note and the mortgage from originator to sponsor to depositor to trust. This particular chain of transfers is necessary to ensure that the loans are "bankruptcy remote," *i.e.*, they ensure that the notes and mortgages will timely be delivered to the trust, and once they have been placed in the trust, if any of the upstream transferors were to file for bankruptcy, the creditors of the bankrupt estate could not lay claim to the notes held in the trust by arguing that the intermediate transactions were not true sales, but rather were done to finance the loan.

59. Bankruptcy remoteness is an essential component of private-label mortgage securitization transactions. The requirements for these transactions are laid out in specific detail in the governing documents, and are designed to protect the investors in the trust's securities, who only want to assume the credit risk of the mortgage loans, not the risk that the loans' originators or securitization sponsors might go bankrupt and their creditors laying claim to the SPV/trusts' assets.

60. The trust has standing to foreclose if, and only if, it is both the holder of the note *and* the mortgagee. **If both the note and corresponding mortgage are not properly transferred to the trust, then the trust lacks standing to foreclose.**

61. The rules for these transfers are governed by the terms of the PSA for each securitization, and by the law governing the issuing trust (with respect to matters of trust law).

62. Each state Uniform Commercial Code has a provision which permits the parties to vary the Code by agreement, with certain exceptions. In the case of mortgage securitizations, the PSA generally requires:

a. the original mortgage note endorsed in blank, without recourse, with all intervening endorsements showing a complete chain of endorsement;

b. the original mortgage or certified copy thereof evidencing its assignment to MERS.[13]

63. **Moreover, the PSAs generally require the transfers of the mortgage loans to the trust (or trust custodian) to be completed within a strict time limit after formation of the trust in order to ensure that the trust qualifies as a tax-free REMIC.**

64. A typical PSA requires that the trustee of the SPV/trust that issues the RMBS ensure that the transfers of the notes and the security instruments are proper and that all required mortgage documentation is present and complete.

65. The applicable state trust law generally requires strict compliance with the trust documents, including the PSA, so that failure to comply strictly with the timeliness, endorsement, physical delivery, and other requirements of the PSA with respect to the transfers of the notes and security instruments means that the transfers are void and the trust therefore does not own the mortgage loans.

[13] These mortgage assignments are required to be in "recordable form" (*i.e.*, legally sufficient to allow the trustee to foreclose in the event of default).

66. For example, the PSA for the trust which purports to hold Mr. and Mrs. Dochner's mortgage filed with the SEC for RMBS titled "Argent Securities Inc., Asset-Backed Pass-Through Certificates, Series 2005-W3," stated in Section 2.01:[14]

> The Depositor, concurrently with the execution and delivery hereof, does hereby transfer, assign, set over and otherwise convey to the Trustee without recourse for the benefit of the Certificate holders all the right, title and interest of the Depositor, including any security interest therein for the benefit of the Depositor, in and to the Mortgage Loans identified on the Mortgage Loan Schedule, the rights of the Depositor under the Mortgage Loan Purchase Agreement, all other assets included or to be included in REMIC I, payments made to the Trustee by the Swap Administrator under the Swap Administration Agreement and the Swap Account. Such assignment includes all interest and principal received by the Depositor or the Master Servicer on or with respect to the Mortgage Loans (other than payments of principal and interest due on such Mortgage Loans on or before the Cut-off Date). The Depositor herewith delivers to the Trustee an executed copy of the Mortgage Loan Purchase Agreement, and the Trustee, on behalf of the Certificate holders, acknowledges receipt of the same.
>
> In connection with such transfer and assignment, the Depositor does hereby deliver to, and deposit with, the Trustee the following documents or instruments with respect to each Mortgage Loan so transferred and assigned, and the Depositor shall deliver or cause to be delivered to the Custodian the following documents or instruments (a "Mortgage File"):
>
> (i) the original Mortgage Note, endorsed in blank, without recourse, or in the following form: "Pay to the order of Deutsche Bank National Trust Company, as Trustee under the applicable agreement, without recourse," with all prior and intervening endorsements showing a complete chain of endorsement from the originator to the Person so endorsing to the Trustee, or with respect to any lost Mortgage Note, an original Lost Note Affidavit; provided however, that such substitutions of Lost Note Affidavits for original Mortgage Notes may occur only with respect to Mortgage Loans, the aggregate Cut-off Date Principal Balance of which is less than or equal to 2.00% of the Pool Balance as of the Cut-off Date…

67. Thus, Section 2.01 of the PSA declares that it is the Depositor that has the power to make transfers to the trust, and that all notes must contain prior and intervening endorsements showing a complete chain of endorsements.

[14] The terms of the PSA for the trust which purports to hold the Doehners' mortgage are substantially similar to Section 2.01 of the PSA in numerous securitized trusts.

68. Similarly, the PSA for the trust which purports to hold Ms. Lowery's mortgage, which was filed with the SEC for RMBS titled "Option One Mortgage Loan Trust 2005-3, Asset-Backed Certificates, Series 2005-3," stated in Section 2.01:

> The Depositor, concurrently with the execution and delivery hereof, does hereby transfer, assign, set over and otherwise convey in trust to the Trustee without recourse for the benefit of the Certificate holders all the right, title and interest of the Depositor, including any security interest therein for the benefit of the Depositor, in and to (i) each Mortgage Loan identified on the Mortgage Loan Schedule, including the related Cut-off Date Principal Balance, all interest accruing thereon on and after the Cut-off Date and all collections in respect of interest and principal due after the Cut-off Date; (ii) property which secured each such Mortgage Loan and which has been acquired by foreclosure or deed in lieu of foreclosure; (iii) its interest in any insurance policies in respect of the Mortgage Loans; (iv) the rights of the Depositor under the Mortgage Loan Purchase Agreement, (v) all other assets included or to be included in the Trust Fund, (vi) payments made to the Trustee by the Swap Administrator under the Swap Administration Agreement and the Swap Account and (vii) all proceeds of any of the foregoing. Such assignment includes all interest and principal due and collected by the Depositor or the Master Servicer after the Cut-off Date with respect to the Mortgage Loans.
>
> In connection with such transfer and assignment, the Depositor, does hereby deliver to, and deposit with the Trustee, or its designated agent (the "Custodian"), the following documents or instruments with respect to each Mortgage Loan so transferred and assigned and the Originator, on behalf of the Depositor:
>
> (i) the original Mortgage Note, endorsed either (A) in blank, in which case the Trustee shall cause the endorsement to be completed or (B) in the following form: "Pay to the order of Wells Fargo Bank, N.A., as Trustee, without recourse", or with respect to any lost Mortgage Note, an original Lost Note Affidavit stating that the original mortgage note was lost, misplaced or destroyed, together with a copy of the related mortgage note; provided, however, that such substitutions of Lost Note Affidavits for original Mortgage Notes may occur only with respect to Mortgage Loans, the aggregate Cut-off Date Principal Balance, as applicable, of which is less than or equal to 1.00% of the Pool Balance as of the Cut-off Date;
>
> (ii) the original Mortgage with evidence of recording thereon, and the original recorded power of attorney, if the Mortgage was executed pursuant to a power of attorney, with evidence of recording thereon;
>
> (iii) an original Assignment. The Mortgage shall be assigned either (A) in blank or (B) to "Wells Fargo Bank, N.A., as Trustee, without recourse"

(iv) an original of any intervening assignment of Mortgage showing a complete chain of assignments;

(v) the original or a certified copy of lender's title insurance policy; and

(vi) the original or copies of each assumption, modification, written assurance or substitution agreement, if any.

69. Section 2.01 of the PSA also requires that the Depositor be the one to assign the mortgage to the trust and that the Trustee or custodian for the trust should have a copy of any intervening assignment of mortgage showing a complete chain of assignments.

70. Rather than ensure legally effective transfer and assignment of the promissory note and mortgage pursuant to the requirements of the governing documents, depositors routinely failed to do so. This failure was driven by the sponsors' desire to complete securitizations as quickly and inexpensively as possible. This failure has been termed a "securitization fail."[15]

71. An example of such a securitization failure is provided in the Nevada Complaint, which alleges, among other things, that Countrywide failed to deliver to certain SPV/trusts original notes with proper assignments or endorsements. Countrywide did not (and could not) remedy these ineffective transfers. In fact, Countrywide's botched transfers of mortgage Notes was a principal ground for a proposed $8.5 billion settlement between Bank of America and various investors who bought certificates in 530 Countrywide securitizations for which Bank of New York was trustee. Verified Petition at 1, *In re The Bank of New York Mellon*, No. 651786/2011 (N.Y. Sup. Ct. June 29, 2011).

72. These securitization failures are not mere technicalities. The PSAs spell out specific procedures in order to ensure a proper transfer and avoid subjecting the trusts to

[15] *See* State of Nevada's Second Amended Complaint, *Nevada v. Bank of America Corp.*, No. 3:11-cv-00135-RCJ-RAM, Dkt. 63 at 4, 17, 36-40 (filed Aug. 30, 2011) ("Nevada Complaint").

taxation. In addition, borrowers need to know the actual holders of their mortgages so that, for example, they can investigate and assert any available defenses in foreclosures, including that the agent of the trustee lacks authority or standing under the note.

73. As *60 Minutes*[16] revealed in its April 3, 2011 exposé:

> It's bizarre but, it turns out, Wall Street cut corners when it created those mortgage-backed investments that triggered the financial collapse. Now that banks want to evict people, they're unwinding these exotic investments to find, that often, the legal documents behind the mortgages aren't there. **Caught in a jam of their own making, some companies appear to be resorting to forgery and phony paperwork to throw people - down on their luck - out of their homes.**

(Emphasis added.)

74. Facts disclosed in recent news reports and uncovered through government investigations and homeowner foreclosure litigation confirm widespread problems with loan securitizers' failure to ensure proper transfer of the required mortgage documentation. In an interview during the *60 Minutes'* exposé, Lynn Szymoniak, a lawyer and fraud investigator who has uncovered instances in which banks appeared to have manufactured mortgage documentation, explained the issue as follows:

> When you could make a whole lotta money through securitization. And every other aspect of it could be done electronically, you know, key strokes. This was the only piece where somebody was supposed to actually go get documents, transfer the documents from one entity to the other. And it looks very much like they just eliminated that stuff all together.

75. As part of its exposé, *60 Minutes* also interviewed Chris Pendley, a temporary employee of DocX who was paid $10 per hour to sign the name "Linda Green" to thousands of mortgage documents that were later used in foreclosure actions. The investigation revealed that

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[16] *See* Interview with Scott Pelley, correspondent for 60 Minutes (April 3, 2011), "The next housing shock," ("60 Minutes") an unofficial transcript is available at http://www.cbsnews.com/stories/2011/04/01/60minutes/main20049646.shtml?tag=currentVideoInfo;segmentTitle (last visited April 5, 2012).

"Linda Green" was a moniker for a fictitious person who purportedly served as a vice president of at least 20 different banks at one time. Mr. Pendley said he and other employees of DocX were expected to sign at least 350 documents per hour using the names of other individuals on documents in an attempt to establish valid title. Asked if he understood what these documents were, Mr. Pendley said, "Not really," and explained that he signed documents as a "vice president" of five to six different banks per day. Mr. Pendley admitted that he was not a vice president of any bank. Thus, mortgage documentation signed by Mr. Pendley was not valid.

76. Lynn Szymoniak's July 14, 2010 letter to the Securities and Exchange Commission (the "SEC Letter") details the fraudulent manufacture of mortgage documents by employees of LPS. According to Ms. Szymoniak, LPS "produced several million Mortgage Assignments, using its own employees to sign as if they were officers of the original lenders." Ms. Szymoniak observed instances of mortgage assignments prepared by LPS employees that contained forged signatures, signatures of individuals as corporate officers on behalf of a corporation that never employed the individuals in any such capacity, and signatures of individuals as corporate officers on behalf of mortgage companies that had been dissolved by bankruptcy years prior to the assignment, among other things. Ms. Szymoniak attached to the SEC Letter numerous examples of such fraudulent assignments.

77. The fraudulent assignments uncovered in foreclosure litigation show that the assignments were prepared and filed in 2008 and 2009, when the governing documents required the mortgages and notes to have been delivered prior to the closing date of the trust, which occurred months or years earlier.

78. For example, Cheryl Samons, an office manager for the Law Office of David J. Stern, a foreclosure mill under investigation by the Florida Attorney General for mortgage

foreclosure fraud, signed tens of thousands of documents purporting to establish transfer of thousands of mortgages in 2008, 2009 and 2010 from MERS, including assignments for Deutsche Bank National Trust Company and HSBC Bank USA, National Association as trustees for trusts that closed in 2005 and 2006. In depositions in foreclosure actions, Ms. Samons has admitted that she had no personal knowledge of the facts recited on the mortgage assignments that were used in foreclosure actions to recover the properties underlying the mortgages backing RMBS. *See* Deposition of Cheryl Samons, *Deutsche Bank Nat'l Trust Co., as Trustee for Morgan Stanley ABS Capital I Inc. Trust 2006-HE4 v. Pierre*, No. 50-2008-CA-028558-XXXX-MB (15th Judicial Circuit, Florida, May 20, 2009), attached as **Exhibit A**. Thus, mortgage documentation signed by Ms. Samons was not valid.

79. In another example, LPS employee Kathy Smith signed mortgage documentation using different titles on behalf of at least six different institutions, including as nominee for Homestar Mortgage Lending; Assistant Secretary of AHMSI; Assistant Secretary of U.S. Bank, N.A.; Assistant Secretary of American Brokers Conduit; Assistant Secretary of Argent Mortgage Company, LLC; and Attorney-in-Fact for Ameriquest Mortgage Company. Thus, mortgage documentation signed by Ms. Smith was not valid.

80. In yet another example, sworn deposition testimony from a Countrywide employee regarding Countrywide-originated loans demonstrates that Countrywide systematically failed to properly transfer or assign the mortgage documents to the trustee. In *Kemp v. Countrywide Home Loans, Inc.*, 440 B.R. 624 (Bankr. D.N.J. 2010), Linda DeMartini, a ten-year employee of Countrywide's servicing division, testified that Countrywide's standard practice was NOT to deliver the original note to the trustee (as required by the governing documents) stating that the "normal course of business would include retaining the documents" and that

Countrywide "transferred the rights...not the physical documents." Based on this testimony, Chief Bankruptcy Judge Judith Wizmur held that the fact that the issuing trustee "never had possession of the note is fatal to its enforcement" and, thus, that the trustee could not enforce the mortgage loan. *Id.* at 629. Judge Wizmur further held that Countrywide Servicing also could not enforce the mortgage loan, because as an agent for the owner of the note, Countrywide Servicing had no more authority to enforce the note than its principal, the issuing trust. *Id.* at 634.

E. Background Regarding LPS

81. Defendant LPS is a provider of mortgage and consumer loan processing services, mortgage settlement services, and "default solutions" (*i.e.*, foreclosures). LPS was formed on July 2, 2008 as a spin-off from defendant Fidelity.

82. According to the company's website, LPS "is a leading provider of mortgage and consumer loan processing services, mortgage settlement services, default solutions and loan performance analytics...."[17] LPS handles more than 50% of residential mortgages by dollar volume in the U.S. *See* LPS Information Statement, Exhibit 99.1 to Amendment No. 6 to Form 10-12B filed with the SEC on June 19, 2008. The company has 14 of the 15 biggest loan servicers as clients and all of the nation's 50 largest banks use at least some of its services.

83. The company operates through two reporting segments: (1) Technology, Data and Analytics; and (2) Loan Transaction Services. *See* LPS' Form 10-K for the period ending December 31, 2009, filed with the SEC on February 23, 2010. LPS' Loan Transaction Services segment includes its default management services and its loan facilitation services. *Id.*

84. LPS touts that its default management services allow its "customers to efficiently manage the business processes necessary to take a loan and the underlying real estate securing

[17] *See* http://www.lpsvcs.com/lpsCorporateInformation/AboutUs/pages/default.aspx (last visited April 5, 2012).

the loan through the default and foreclosure process." *Id.* LPS states that it "offer[s] a full spectrum of services relating to the management of defaulted loans, from initial property inspection through the eventual disposition of our customer's asset." *Id.* These include foreclosure services, property preservation and inspection services, and asset management, default title and settlement services. *Id.* In particular, LPS represents that it provides its lender and servicing customers with services that facilitate completing the foreclosure process, such as offering them certain administrative and support services in connection with managing foreclosures, including posting and publication of foreclosure and auction notices, conducting title searches, providing due diligence and research services, and various other title services in connection with the foreclosure process. *Id.*

85. At all relevant times, LPS operated its default management services segment from its headquarters in Jacksonville, Florida, and through its document manufacturing subsidiaries LPS Default Solutions, in Mendota Heights, Minnesota, and DocX, in Alpharetta, Georgia.

86. As the foreclosure crisis began to unfold, LPS' default management services became the company's primary source of revenue. Foreclosures have skyrocketed since 2006. In 2008, nearly 3.2 million foreclosure filings were made on more than 2.3 million U.S. properties, an increase of 225% since 2006 and an 81% increase since 2007. *See* RealtyTrac, 2008 Year-End Foreclosure Market Report, Feb. 5, 2009. In 2009, over 3.9 million foreclosure filings were made on more than 2.8 million properties. *See* RealtyTrac, Realty Track Year-End Report Shows Record 2.8 Million U.S. Properties with Foreclosure Filings in 2009, Jan. 13, 2010. At the end of October 2010, the number of properties heading into foreclosure was 7.4 times historical averages. In 2011, 2.7 million foreclosure filings were made on nearly 1.9 million properties. *See* RealtyTrac, 2011 Year-End Foreclosure Report, Jan. 9, 2012.

87. During this period, LPS' revenue from foreclosure-related services increased from $278 million in 2006, to more than $1 billion in 2009 and 2010 and over $800 million in 2011, representing a major portion of the company's total gross revenue of nearly $2.3 billion in 2009, $2.4 billion in 2010, and $2.1 billion in 2011.

88. LPS's bank clients hire LPS for one simple reason: they want a free service. LPS attained its market dominance primarily because it does not charge banks for its foreclosure-related services. Instead, it charges referral fees to its network of foreclosure mill law firms like defendants LS&R, MDK and RAC&J (which are known as "Network Firms"), who pay LPS for every foreclosure case they receive.

89. Specifically, LPS uses its proprietary software, the LPS Desktop application, as a tool to market its default management services to these clients who already use its technology. Specifically, LPS's Mortgage Servicing Package ("MSP") is a proprietary technology platform that allows mortgage servicers to administer all aspects of loan servicing, including payment processing, customer service, investor reporting, and even writing letters to consumers. MSP is the leading loan servicing platform in the industry, supporting nearly half of all first mortgages.[18]

90. For servicing of mortgage loans in default (loans that are typically over 60 days delinquent), LPS offers a web-based platform called LPS Desktop, which provides a step-by-step process for each task in the foreclosure process. LPS Desktop automates and monitors deadlines associated with each task, and it tracks, time-stamps and permanently records all actions and communications taken with respect to that foreclosure. In addition, LPS Desktop captures, organizes and stores information from foreclosure-related documents (such as notices of default and mortgage assignments). Finally, LPS Desktop generates and manages invoices sent by

[18] *See* LPS Annual Report on Form 10-K, filed March 1, 2011.

Network Firms to servicers. LPS Desktop also tracks the Network Firms' compliance with LPS-imposed timelines for foreclosures.

91. As of 2011, 18 of the country's top 20 mortgage servicers were using MSP, LPS Desktop or both.

92. Through these technology platforms, LPS has been able to manage core aspects of the foreclosure process on behalf of its servicer-clients. When a loan goes into default, it is coded for foreclosure on the servicer's system, at which point LPS Desktop automatically initiates a referral of the matter to a LPS Network Firm. LPS Desktop then electronically transmits to the Network Firm a "referral package" that contains key documents and information from the servicer (such as copies of the relevant note and mortgage) to the Network Firm.

93. As former LPS CEO Carbiener explained:

> So, if somebody's using our base technology to manage those foreclosure processes, it's then easier for us to come in and say okay, if you're using my core technology within your foreclosure department to managing the processes more efficiently, why don't you consider now outsourcing that actual running the department to me because I run a foreclosure operation that supports many lenders and therefore, I don't just gain the efficiencies from the technology, I can also gain the efficiencies from having more volumes coming through my call center and support center than you have.... So, it's really the integration of the individual services back into the core platform, our ability to tie the whole thing together for a lender so that they have one vendor to deal with. Not just for the technology, but also for the various services that have to take place over the course of the foreclosure.

94. Under LPS' business model, LPS offers these default management services free to its bank and mortgage servicer clients. Bill Newland ("Newland"), Vice President of Operations of LPS Default Solutions, who at all relevant times handled LPS' attorney management area testified that when LPS provides services to its clients – the mortgage servicers that hire it to do

foreclosures – it does not charge them fees. Newland Dep. at 52-53, 154-155.[19] Accordingly, for mortgage servicers and banks, receiving complete default management services for free during the foreclosure crisis was a "no brainer." In such a way, LPS was successful in signing up existing customers into these services and gained market share as bank clients turned to LPS to assist them in completing foreclosures faster and in greater volumes.

95. In order to generate revenues from its business model, LPS depends on servicers agreeing to utilize foreclosure attorneys and trustees that were part of the LPS Network. LPS constructed its Network so that LPS itself – not the mortgage Servicer – serves as the exclusive gatekeeper for the foreclosure mill firms that want access to LPS' clients and millions of dollars in foreclosure-related fees. LPS monetizes this powerful position by requiring these Network Firms to pay kickbacks to LPS to obtain foreclosure and foreclosure-related bankruptcy work through the LPS Network.

96. In order to be a part of the LPS network, attorneys had to execute a "Network Agreement" with LPS. This agreement imposed significant limitations and requirements on attorneys and also set forth a fee arrangement between LPS and network attorneys. LPS earns revenue by charging referral fees it calls "administrative fees" to lawyers in its network for sending them foreclosure and bankruptcy files. Newland testified that while clients do not pay for LPS' services regarding a foreclosure (*Id.* at 143), attorneys in the network pay an "administrative support fee" for having the loan come to them through the referral network of LPS Default Solutions. *Id.* at 143. According to Newland, the fee is a set dollar amount determined by LPS' executives. *Id.* at 144. Accordingly, the only compensation of any type that LPS Default Solutions receives is this administrative support fee from attorneys. *Id.* at 156.

[19] *See* Excerpts of the Deposition Transcript of Bill Newland dated June 16, 2009 ("Newland Dep."), in *Wood v. Option One Mortgage Corp.*, No. 08-183 (Cir. Ct. Dekalb, AL) attached as **Exhibit B**.

According to Newland, these fees fund all of LPS default Solutions' activities, pay all of its overhead, and comprise all of its profits. *Id.*

97. This fee arrangement between LPS and network attorneys, which amounted to fee-splitting, is detailed in the Network Agreements that these parties executed. **An Exemplar Network Agreement is attached as Exhibit C.** These agreements outline a schedule of the fees that will be billed to the client for the completion of certain legal work by the attorneys and the fees that the network attorneys are required to pay to LPS. The schedule shows that the amounts paid by attorneys to LPS are directly tied to, and constitute shared portions of, the amounts paid by clients to attorneys. *See id.* LPS failed to disclose these fees to courts and borrowers in various foreclosure and bankruptcy proceedings throughout the country.

98. With the network attorneys operating at its direction LPS could push through foreclosures as quickly as possible, earn more business from its bank and servicer clients, expand its market share, earn more fees from the attorneys, and thereby increase the company's profits.

99. LPS' control over its network attorneys is evident from the role it played in selecting attorneys for various cases. Only attorneys who signed a Network Agreement with LPS could use its process management system. *See* Newland Dep. at 5. Newland testified LPS' clients are limited in that if they want the loan to stay on the company's system, they have to use an attorney in the LPS network because attorneys who are not in the network do not have access to the company's system. *See Id.* at 95-96.

100. LPS keeps a tight rein on its network attorneys, who are required to "follow the timeframes and communication requirements" provided by LPS and take certain specified legal actions upon request of the company (*e.g.*, attend hearings and file summary judgment motions).

101. LPS' control of the communications between its network attorneys and their clients is evidenced by Federal Bankruptcy Court opinions. *See, e.g., In re Taylor*, 407 B.R. 618, 624 (Bankr. E.D. Pa. Apr. 15, 2009) (discussing the court's review of the NewTrak system that was later integrated into LPS Desktop, and noting that "NewTrak manages, without human interaction, the relationship between [the client] and its attorneys in the collection of delinquent mortgage loans through automated responses to certain queues."). The opinion states that "[t]he retained counsel does not address the client directly nor does it address another counsel that may be performing tasks for [the client] in the same case, even when the separate attorneys are handling related matters." *Id.* at 637. The attorney in that case "believed he was precluded from making any direct contact with the client," (*Id.* at 638) and did not "believe it could deviate from that form of consultation even when the Court expressed concern over the handling of the Stay Motion." *Id.* at 645. *See also In re Wilson*, 2011 Bankr. LEXIS 1213, at *33 (Bankr. E.D. La. Apr. 6, 2011) (where the court granted a Motion for Sanctions as to the liability of LPS where "LPS managed the communications between OptionOne and its counsel....")

102. In order to ensure Network Firms' compliance, LPS instituted a performance review system that was based on the speed with which Network Firms pushed through foreclosures and ranked them on how quickly they completed various tasks.

103. Newland testified about LPS's Attorney Performance Reviews ("APR") ranking system, stating that the "APR ranking is based off of the completion of events that are within the APR scoring module." Newland Dep. at 169. There are recommended time frames for completing events (*e.g.*, a foreclosure sale), and the APR measures how the attorney does in completing these events within those time frames. *Id.* at 169-170.

104. As *Reuters* reported:

> Interviews, deposition transcripts and LPS's own records underline that the company keeps its clients happy and maximizes its own fee income by whipping law firms to gallop cases through the courts. The law firms are on a stopwatch: Kersch confirmed that the LPS Desktop system automatically times how long each firm takes to complete a task. It assigns firms that turn out work the fastest a "green" rating; slower ones "yellow" and "red" for those that take the longest.
>
> Court records show that green ratings go to firms that jump on offered assignments from their LPS computer screens and almost instantly turn out ready-to-file court pleadings, often using teams of low-skilled clerical workers with little oversight from the lawyers. Copies of company newsletters from shortly before LPS was spun off show that the company each year gave awards to the law firms that were consistently the fastest.
>
> Firms that move more slowly were slapped with "red" designations. For them, work offers dried up.[20]

105. Accordingly, Network Firms were at the mercy of LPS, who handled more than 50% of the industry's residential mortgage volume. These Network Firms had to learn to operate successfully within the confines of the APR rankings to continue to receive LPS referrals.

106. Network Firms like defendant MDK thrived under the LPS referral system. Indeed, MDK won awards from LPS for being the fastest law firm to foreclose in Cuyahoga County, Ohio. MDK proudly featured the awards it received from LPS on the firm's website, including its "green" rating from LPS and a picture of the plaque it received. *See* **Exhibit D.** High APR ratings translate into potentially thousands of new cases and enormous profits, generated, in large part, by owned and controlled companies set up by Network Firms to charge fees for ancillary "default management services" like title searches, BPOs, and property inspections.

107. LPS's tight control over legal referrals and the substantial fees LPS charges firms for such referrals has required Network Firms to change their business models in order to protect

[20] Scot J. Paltrow, "Special Report: Legal woes mount for a foreclosure kingpin," *Reuters* (Dec. 6, 2010), at 4, http://www.reuters.com/assets/print?aid=USTRE6B547N20101206 (last visited Oct. 29, 2011) (hereinafter, "Reuters").

their income streams. Rather than making their profits primarily from legal fees, these law firms use the legal work referred by LPS to create higher profit vendor-related work such as title services from owned or affiliated abstract companies. In this way, LPS and its Network Firms, with their interconnected back-office operations, have created fee-driven foreclosures.

108. Prof. Adam Levitin and Tara Twomey explained that institutionalized piling on of junk fees by mortgage servicers and their foreclosure law firms (through captive default management service affiliates) is an inherent consequence of misaligned economic incentives:

> Because servicers are permitted to retain ancillary fees, they have an incentive to charge borrowers as much in fees as they can, even if the fees are not provided for by the mortgage loan documents or a direct contract....
>
> [A] defaulted homeowner is unlikely to have the presence of mind to notice an illegal fee, much less the financial means to fight it. Even if a mortgage is performing, a small fee is easily overlooked, especially as servicers are under no obligation to send borrowers detailed payment histories with the loan accounting, and typically send just an invoice. Thus, there is relatively low risk to imposing illegal fees upon defaulted accounts, and a significant upside. If challenged about an illegal fee, a servicer can easily refund the fee, apologize, and claim that it was a one-off mistake; the homeowner is unlikely to pursue legal action or to know if illegal fees are a systemic practice....
>
> Many servicers also insource activities like force-placed insurance, appraisals, title searches, and legal services to affiliated entities. Insourcing allows servicers affiliates to charge inflated fees that get passed along to the homeowner and can come at the expense of investors if a foreclosure does not produce sufficient income to repay them all. The profit potential of retained fee income gives servicers a financial incentive to overreach in imposing ancillary fees and to load up accounts with such fees. This practice lowers the ultimate return to investors by driving some borrowers into foreclosure in the first place or by reducing the share of foreclosure recoveries available to RRMBS investors because of the senior priority of servicers' fees.[21]

109. Because it is so easy for them to pile on and hide junk fees, servicers like LPS (and law firms like LS&R, RAC&J, and MDK) file as many foreclosure cases as they can,

[21] Adam J. Levitin and Tara Twomey, Mortgage Servicing (2011), Georgetown Law Faculty and Other Works, Paper 498, at 43-45; 43, 28 Yale J. On Reg. 1 (2011) ("Levitin and Twomey Paper"), http://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=1497&context=facpub.

quickly and by any means possible, even when there is no evidence of their clients' ownership of allegedly defaulted mortgages. Indeed, homeowners are forced to pay these fees even in cases where they are able to raise the money to reinstate their mortgages. Specifically, a defaulting borrower must pay the lender's attorney fees and other foreclosure-related charges when the borrower exercises his or her right to reinstate.

110. The foreclosure-related fees charged by Defendants are objectively overstated, unfair, and unreasonable. GSEs Fannie Mae and Freddie Mac are the largest mortgage investors in the United States, collectively owning or guaranteeing about half of all outstanding mortgage debt nationwide. Servicers hired by the GSEs are required to abide by highly specific guidelines, including the requirement that legal work for foreclosures must be referred to a few law firms in each state that have been granted "designated counsel" or "retained attorney" status. Fannie Mae and Freddie Mac define the maximum rate of fees that can be charged by foreclosure law firms. Because of their market dominance, Fannie Mae and Freddie Mac have established prevailing industry standards that govern mortgage servicers and their foreclosure law firms.

111. Using the GSEs' flat-fee schedule as an objective benchmark of reasonableness, the attorneys' fees and other foreclosure-related fees charged to Plaintiffs by defendants LPS, LS&R, RAC&J, and MDK were inflated, unfair and unreasonable.

F. Defendants Orchestrated Fraudulent Foreclosures

112. "Lender Processing Services has played a singularly destructive role in the mortgage servicing industry." Yves Smith, "Lender Processing Services Behind More Record-Keeping Botches and Foreclosure Forgeries," *Naked Capitalism* (Mar. 30, 2011). Simply put, LPS "places its profits over integrity of records and due process." *Id.*

113. Defendants knew that unless their clients owned both the note and the mortgage, they would not have standing to foreclose. They also knew that unless they fabricated and submitted documentation purporting to establish this standing, they could not effect foreclosures on behalf of their clients, and could not profit thereby. Defendants have engaged in a widespread conspiracy to deceive the Ohio courts and borrowers by fabricating thousands of mortgage assignments and other mortgage documents. **These fraudulent documents purported to reflect transfers of the mortgages to the trusts, thereby giving the illusion of "standing" even though the trust had already closed.**

114. Because LPS managed default services for a significant portion of the mortgage industry, and because proper documentation of the notes and mortgages had largely not been prepared as required by the governing documents, in order to enable the foreclosure process, LPS had millions of documents to create and/or execute.

115. The fraudulent documents were created and/or executed by employees and/or contractors of LPS and its subsidiaries DocX and LPS Default Solutions. These fraudulent documents were created in both LPS' Alpharetta, Georgia and Minnesota locations. *See* Reuters at 3.

116. The following are some, but not all, of the false and deceptive documentation methods employed by Defendants:

- Backdated mortgage assignments executed after foreclosures were initiated;
- Mortgage assignments with forged signatures of the individuals purporting to have signed on behalf of the grantors, and/or forged signatures of the purported witnesses and the notaries;
- Mortgage assignments with signatures of individuals signing as corporate officers for corporations that never employed them in any such capacity;

- Mortgage assignments prepared and signed by LPS, LPS Default Solutions, and DocX employees purporting to be corporate officers of mortgage companies that had been dissolved by bankruptcy years prior to the "Assignment;"

- Mortgage assignments prepared on behalf of grantors who had never themselves acquired ownership of the notes by a valid transfer, including numerous such assignments where the grantor was described privately by the co-conspirators as "Bogus Assignee for Intervening Assignments;"

- Mortgage assignments notarized by notaries who never witnessed the signatures that they notarized;

- Note endorsements and allonges executed after trust cut-off dates;

- Note endorsements and allonges prepared and signed by LPS, LPS Default Solutions, and DocX employees purporting to be representatives of corporations for whom they never worked;

- Note endorsements and allonges prepared and signed by LPS, LPS Default Solutions, and DocX employees purporting to be corporate officers of companies that had been dissolved or bankrupt long before the endorsement; and

- Note endorsements and allonges prepared long after trust cut off dates.

See Reuters at 2-3.

117. Creating bogus documents was one of the primary services DocX offered its customers for a fee. As is evidenced by a DocX rate sheet, DocX offered the following services, among others, for a specified fee:

- Create Lost Note Affidavit

- Create Missing Intervening Assignment

- Cure Defective Assignments

- Recreate Entire Collateral File

See Exemplar DocX rate sheet, attached as **Exhibit E**.

118. These documents often required signatures from corporate officers. Since obtaining signatures on such significant volumes of documents is very time-consuming and expensive each client designated between two and four people at DocX with "signing authority" for those clients.

119. In delegating "signing authority" to DocX employees, the LPS bank/servicer clients would first review copies of various DocX employees' signatures to decide which employee should be assigned the task of forging signatures of corporate officers, including Vice President and Assistant Vice President or Secretary. Because different states required differently titled employees to sign Assignments of Title and Releases of Liens, the LPS clients designated several titles to different LPS employees.

120. LPS abused this "signing authority" to push through the large volume of foreclosures by requiring its employees to fraudulently create and or sign documents needed to complete files for foreclosure. This practice involved LPS employees signing documents without verifying or reviewing their content and, in many cases, not even knowing what it was that they were signing. This practice was pervasive throughout LPS.

121. LPS went so far as to set up specific rooms to facilitate this improper conduct. At DocX, this practice occurred in a "signing room" also known internally as the "forging room." In the signing room there were 10-20 employees sitting at tables with large stacks of documents on one side of them. Each person pulled a page off the top of the stack near them, signed that page and moved it to another stack next to them. They did not perform any analysis, review or verification of any details in the documents they were signing.

1. Surrogate Signers

122. In order to further expedite the fraudulent document creation process, LPS employed a practice called "surrogate signing," by which it required certain employees to sign or forge the names of those individuals at LPS who had been given signing authority by clients.

123. This practice was confirmed by Chris Pendley in an interview for the television program *60 Minutes*.[22] Pendley stated that on his first day as an employee at DocX, he was informed that he was going to be signing documents using someone else's name. Mr. Pendley stated that he would sign documents as though he was an officer of a bank and would sometimes be "Vice President" of as many as five or six different banks on a given day. Mr. Pendley explained that DocX employees were required to sign at least 350 documents an hour and that he alone signed 4,000 a day. He was paid $10 an hour to sign documents in this manner. The *60 Minutes* episode also revealed that some of the supposed bank vice presidents at DocX were actually high school students.[23]

124. LPS' and DocX's surrogate signing practices were also confirmed by former LPS employee Cheryl Denise Thomas, who testified that she personally signed an assignment of mortgage as a Vice President for MERS, even though she was not a vice president of that company. *See* Thomas Dep. at 42-43.[24] Moreover, Ms. Thomas explained that numerous mortgage assignments were signed by "surrogate signers." *Id.* at 45-51. Ms. Thomas explained that they were told that surrogate signing was "legal" and "okay." *Id.* at 54. Managers such as

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[22] *See "60 Minutes"*.

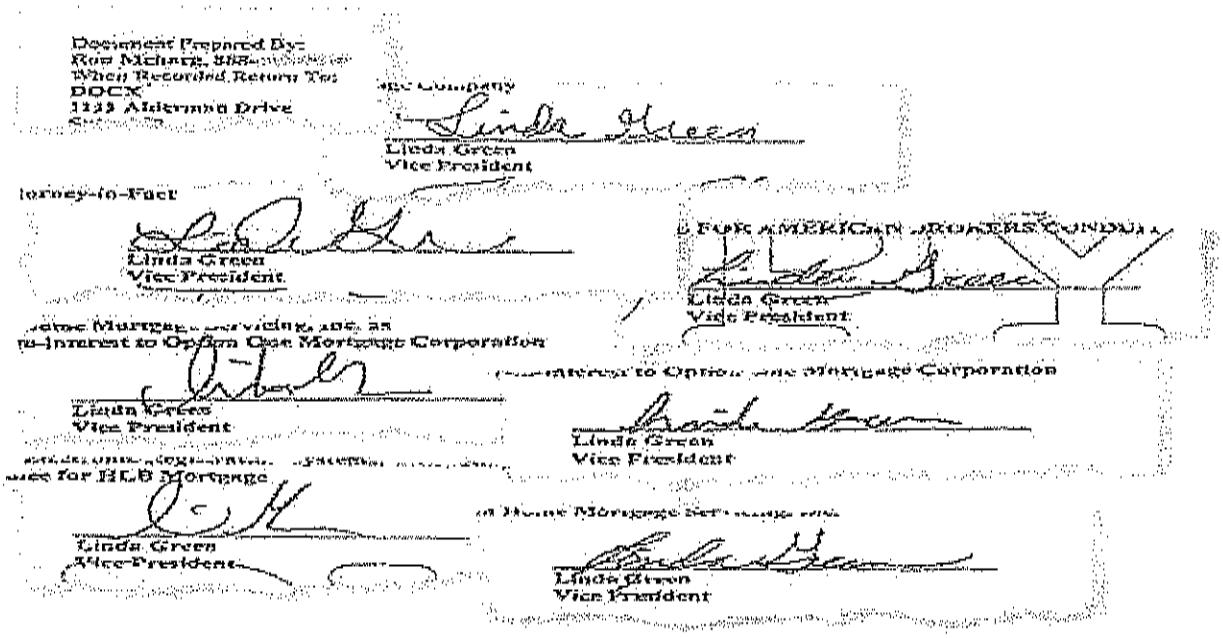
[23] *Id.*

[24] *See* Excerpts of the Deposition Transcript of Cheryl Denise Thomas dated March 23, 2011 ("Thomas Dep."), in *Wells Fargo Bank N.A. v. Mariskovic*, No. 09-CA-007640 (Fla. 9th Cir. Ct.), attached as **Exhibit F**. Ms. Thomas held many different positions at DocX. Thomas Dep. at 10-11. Her last position before the closing of DocX was working in the Reject Department. *Id.*

Renee Gaglione and Shelly Scheffey told employees to fill out a form indicating that other employees could sign for that person. *Id.* at 55-56. Ms. Thomas explained that LPS/DocX hired a lot of temporary employees to serve as surrogate signers and notaries. *Id.* at 77. Ms. Thomas testified that the surrogate signing procedures occurred before and after DocX became part of LPS. *Id.* at 57.

125. Mr. Pendley explained that while this practice seemed strange, he and his colleagues were repeatedly told by supervisors that everything was above board and legal. *See 60 Minutes.*

126. LPS' and DocX's surrogate signing practices are further evidenced by documents filed with county clerk offices and courts throughout the country. Indeed, as has been widely discussed in the media, many DocX documents were repeatedly signed by "bank officers" such as Linda Green. The signature "Linda Green" appears on hundreds of thousands of mortgage assignments as a "Vice President" at a minimum of 14 different banks and mortgage companies. *See* Office of the Attorney General, State of Florida, Economic Crimes Div., "Unfair, Deceptive and Unconscionable Acts in Foreclosure Cases," attached as **Exhibit F**. In reality, Linda Green was an LPS/DocX employee and not a bank officer. Moreover, a study of the signatures on documents supposedly signed by Linda Green reveals that Linda Green's name was signed by many different people, who had very different handwriting:



2. LPS and DocX Directed Employees to Improperly Notarize Documents

127. In addition to forging documents and signing without review, LPS and DocX also engaged in improper notarization of the documents it was executing. To be valid, many assignments and other mortgage-related documents had to be notarized. Notarization affirms that people signing the documents were who they purported to be. There are certain protocols that notaries are required to follow before notarizing a document. Despite the legal significance attributed to their notarization, LPS also caused tens or even hundreds of thousands of documents to be fraudulently notarized. Mortgage assignments filed in county clerk's offices show that LPS' signing and notarization practices were not limited to DocX but also occurred at its other offices. *Reuters* at 1.

128. For example, Ms. Thomas testified that she notarized anywhere between one to a thousand documents at DocX on any given day. *See* Thomas Dep. at 23. Ms. Thomas explained that she was instructed not to be in the room when assignments were being signed and would

notarize documents without seeing them signed by the purported signatories. *Id.* at 26-27. Ms. Thomas testified that she raised questions to supervisors as to why many people (whose signatures she was notarizing) signed as corporate officers (*e.g.*, vice presidents, secretaries). She was told to do what she was required to do, that it was "covered," and that there was legal documentation. *Id.* at 31-32. Indeed, Ms. Thomas testified that Renee Gaglione would keep her away from the signing room and told her it was none of her business who was in the room. *Id.* at 64. Ms. Thomas stated that she has notarized documents that she knew a surrogate had signed. *Id.* at 58. When Ms. Thomas left DocX, her notary stamp was destroyed by DocX. *Id.* at 32-33.

3. LPS Default Solutions in Minnesota Also Engaged in Widespread Deceptive Document Execution Practices

129. LPS' deceptive document fabrication practices were not limited to the misconduct at DocX. LPS Default Solutions in Minnesota also executed tens of thousands of deceptive and defective mortgage assignments, affidavits, and other mortgage documents.

130. LPS Default Solutions' deceptive document execution practices resulted in false, fraudulent assignments, default affidavits and other mortgage documents. Ohio Courts and homeowners relied on these faulty documents to foreclose on homes.

131. Like DocX, LPS Default Solutions' Minnesota office mass-produced affidavits, assignments, and other mortgage documents that were fraudulently notarized and contained other false and/or erroneous representations. The deficiencies in LPS Default Solutions' document execution operation mirror the deceptive conduct at DocX, described above.

132. Specifically, LPS Default Solutions employees executed documents falsely representing that: (i) the document had been executed in the presence of a notary (when it had not); (ii) the document had been executed in the presence of a witness (when it had not); (iii)

the employee signing the document was under oath at the time of execution, (when he/she was not); and/or (iv) they possessed personal knowledge of the facts to which the document attested (when the employees either did not review the document to know whether the information contained therein was accurate and/or did not possess the requisite personal knowledge necessary to attest to the accuracy of the information in the document). These deceptive practices were systemic, widespread and authorized by LPS management and affected mortgage assignments, affidavits, and other mortgage documents utilized in connection with Ohio foreclosures.

4. **Security Breaches and Significant Errors**

133. In addition to the above practices, the volume of work and LPS' and DocX's emphasis on speed over accuracy led to security breaches and significant errors in mortgage documents.

134. An affidavit by former LPS employee Adrian G. Lofton in *In The Matter of Residential Mortgage Foreclosure Pleading and Document Irregularities*, No. F-059553-10 (Super. Ct. Chancery Div. NJ) attached as **Exhibit H**, who worked at LPS' former corporate parent, Fidelity, describes an environment where cost cutting pressures led to widespread abuse of basic security protocols. Employees of his unit had the ability to access the mortgage records of borrowers and alter them, which they did. An important control was that each employee had his own login and password and was, per stated LPS policy, allowed only to utilize only his own account.

135. Since new employees could not get user names or passwords for a month or two because the banks were slow, they had to use other people's passwords to work on files. Managers and supervisors all encouraged and pressured employees to share passwords, including Assistant Vice President Eric Tate. "Everybody in the whole department was guilty of it."

136. Employees were graded and rewarded on speed and on not asking their bosses for help in resolving problems. According to Mr. Lofton, this devolved into an out of control environment. Lofton 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 H,** 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 Ms. 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.*

5. Defendant AHMSI Hired LPS and DocX to Fabricate Assignments and Other Mortgage Documents

137. AHMSI is engaged in the business of servicing home loans, the majority of which are held in residential mortgage-backed securitization trusts. As part of the securitization process, an agent of the trust, known as a "servicer," obtains the right to service the pool of loans and agrees to act as the trust's agent in doing so.

138. As the servicer, AHMSI provides a variety of services to the securitization trusts, including, but not limited to, collecting principal, interest, tax, and insurance payments from homeowners and initiating foreclosure proceedings on behalf of the trust that purports to own the loan.

139. DocX began providing document processing services to AHMSI in or about April 2008 when a Professional Services Agreement between predecessor Option One Mortgage Corporation ("Option One") and DocX, was assigned by Option One to AHMSI as part of a larger asset acquisition.

140. Option One originally had entered into the Professional Services Agreement with DocX over two years earlier, on January 9, 2006. DocX had agreed to process lien releases and related documents, including assignments of mortgage, for Option One pursuant to a "Description of Services and Fees" -- also known as a "Statement of Work" -- which was attached as Exhibit A to the Professional Services Agreement.

141. Although the Professional Services Agreement's stated one-year term expired on January 9, 2007, Option One and DocX continued performing under the Statement of Work until April 30, 2008, when Option One assigned its contractual rights and obligations to AHMSI. At that time, DocX began processing lien releases and related documents, including certain assignments of mortgage, for AHMSI, as it had done for Option One.

142. On August 1, 2008, the Professional Services Agreement was amended to include additional assignment processing services ("Amendment 1"). Amendment 1 also contained a "Statement of Work" by which defendants LPS and DocX agreed to prepare and execute assignments of mortgage on AHMSI's behalf and to record the assignments in various jurisdictions. Lorraine Brown, President of Document Solutions, a division of LPS, executed Amendment 1 on October 10, 2008. Amendment 1 formalized what AHMSI and defendants LPS and DocX had been doing, and continued to do, under the Professional Services Agreement.

143. Pursuant to these contractual relationships and acting on behalf of AHMSI and others, LPS and DocX fabricated assignments and other mortgage documents that were executed by "surrogates" as Defendants referred to them, who routinely signed the names of others instead of signing their own names. That is, the person whose name appeared on the assignment documentation was not the person who appeared before the witness or notary. Notaries working

under LPS' and DocX's direction and control improperly notarized the assignments containing signatures of surrogates.

6. LPS' Illicit Practices Caused Default Services Revenues to Rise

144. Through LPS' hard-to-refuse business model and illicit practices as detailed above, Defendants were successful in dominating the market for default management services. In such a way, Defendants were able to increase LPS' revenues to unprecedented levels in an otherwise terrible economy. Indeed, LPS' default management services revenues more than doubled and grew to represent nearly 50% of its total revenue. This is illustrated in the table below, which contains LPS' total annual revenues and total annual revenues for the Default Management Services business segment for the years 2007 through 2011:

Year	Default Services Revenue	Total Revenues	Percentage of Total Revenues
2007	$473,000,000	$1,512,500,000	31%
2008	$851,800,000	$1,775,600,000	48%
2009	$1,137,300,000	$2,299,100,000	49%
2010	$1,060,100,000	$2,376,900,000	45%
2011	$ 816,200,000	$ 2,090,100,000	39%

7. Although DocX Was Shut Down, LPS' Illicit Practices Continue

145. The fraudulent practices described above resulted in a very large number of fraudulent documents being filed with county records offices and in court proceedings. After news of the fraudulent document preparation became public, likely sensing an impending legal and public relations catastrophe, LPS shut down DocX in September 2010.

146. However, LPS' illicit practices, which were not limited to DocX, have continued unchecked at its other locations. Specifically, LPS began shifting robo-signing operations to on-site client locations, where LPS' signers and notaries unscrupulously mass-produced the same

type of deficient and forged documents generated at DocX and LPS Default Solutions. *See* Reuters at 2.

147. A July 18, 2011 Associated Press article entitled "'ROBO-SIGNING' OF MORTGAGES STILL A PROBLEM," reported that "Robo-signing is not even close to over," quoting Curtis Hertel, the recorder of deeds in Ingham County, Michigan. "It's still an epidemic." *Id.*

148. The July 18, 2011, article reports that in "Essex County, Massachusetts, the office that handles property deeds has received almost 1,300 documents since October 2010, with the signature of 'Linda Green,' but in 22 different handwriting styles and with many different titles." *Id.* Essex County officials believe that "Linda Green hasn't worked in the industry since [DocX was closed]." However, her signature remains in use. *Id.* "'My office is a crime scene,' says John O'Brien, the registrar of deeds in Essex County." *Id.*

149. The July 18, 2011 article also reports similar problems uncovered by the Guilford County, North Carolina Register of Deeds, which has "received 456 documents with suspect signatures from Oct. 1, 2010, through June 30," including mortgage assignments and transfers of loans from one bank to another. *Id.* The suspect signatures include 290 documents signed by Bryan Bly and 155 by Crystal Moore, who have both admitted to signing their names to mortgage documents without having read them. *Id.*

8. Government Investigations of LPS' Illicit Foreclosure Practices

150. As a result of the abuses and misconduct described above, LPS is currently the subject of numerous state and federal investigations into its fraudulent foreclosure practices. In particular, LPS is or has been under investigation by the U.S. Attorney's office for the Middle District of Florida, the attorneys general of California, Delaware, Florida, Illinois, Michigan,

Missouri and Nevada, and other state and federal authorities, including various regulatory agencies. These investigations have focused on LPS's role in creating bogus documents that were used by its network of foreclosure mill law firms in foreclosure proceedings initiated across the country.

151. The Company's annual report on Form 10-K filed with the Securities and Exchange Commission ("SEC") on February 29, 2012, describes the nature of these investigations as follows:

> We have responded to or are currently responding to inquiries from multiple governmental agencies. These inquiries range from informal requests for information to grand jury subpoenas. In 2010, we learned that the U.S. Attorney's office for the Middle District of Florida and the Florida Attorney General had begun conducting separate inquiries concerning certain business processes in our default operations. Since then, other federal and state authorities, including various regulatory agencies, and other state attorneys general, have initiated inquiries about these matters, and additional agencies may do so in the future. **The business processes that these authorities are considering include the former document preparation, verification, signing and notarization practices of certain of our default operations and our relationships with foreclosure attorneys. We have discovered, during our own internal reviews, potential issues related to some of these practices which may cause the validity of certain documents used in foreclosure proceedings to be challenged.** However, we are not aware of any person who was wrongfully foreclosed upon as a result of a potential error in the processes used by our employees. We have been cooperating and we have expressed our willingness to continue to fully cooperate with all such inquiries.

(Emphasis added.)

152. In addition, during the fourth quarter of 2010, the Office of Comptroller of the Currency ("OCC"), the Office of Thrift Supervision ("OTS"), the Federal Deposit Insurance Corporation ("FDIC"), and the Federal Reserve Board ("FRB") undertook a coordinated horizontal examination of foreclosure processing at the nation's 14 largest federally regulated mortgage servicers, *i.e.*, LPS's clients, as well as LPS itself. The interagency examination of LPS was led by the FRB with participation by FDIC, OCC, and OTS.

153. As John Walsh, Acting Comptroller of the Currency testified before the Senate Committee on Banking, Housing, and Urban Affairs on February 17, 2011:

> In general, the examinations found **critical deficiencies and shortcomings in foreclosure governance processes, foreclosure document preparation processes, and oversight and monitoring of third party law firms and vendors**. These deficiencies have resulted in violations of state and local foreclosure laws, regulations, or rules and have had an adverse affect on the functioning of the mortgage markets and the U.S. economy as a whole. By emphasizing timeliness and cost efficiency over quality and accuracy, examined institutions fostered an operational environment that is not consistent with conducting foreclosure processes in a safe and sound manner.[25]

154. On April 13, 2011, LPS entered into a consent order with federal banking regulators, including the OCC, FDIC, FRB, and OTS, wherein it has agreed to undertake internal and third-party reviews of its foreclosure operations, including its document execution services from 2008-2010, and to formulate and implement a remediation plan. The consent order leaves open the possibility that LPS may be subjected to civil penalties for its abuses of the mortgage foreclosure process. Specifically, the OCC issued a release on April 13, 2011, stating:

> The Office of the Comptroller of the Currency today announced formal enforcement actions against eight national bank mortgage servicers and two third-party servicer providers for unsafe and unsound practices related to residential mortgage loan servicing and foreclosure processing.
>
> The eight servicers are Bank of America, Citibank, HSBC, JPMorgan Chase, MetLife Bank, PNC, U.S. Bank, and Wells Fargo. **The two service providers are Lender Processing Services (LPS) and its subsidiaries DocX, LLC, and LPD Default Solutions, Inc.**; and MERSCORP and its wholly owned subsidiary, Mortgage Electronic Registration Systems, Inc. (MERS).
>
> * * *
>
> **The enforcement actions require the servicers to promptly correct deficiencies in residential mortgage loan servicing and foreclosure practices that examiners identified in reviews conducted during the fourth quarter of 2010.** The actions require the servicers to make significant improvements in practices for residential mortgage loan servicing and foreclosure processing, including communications with borrowers and dual-tracking, which occurs when

[25] Written testimony available at http://www.occ.treas.gov/news-issuances/congressional-testimony/2011/pub-test-2011-19-written.pdf (emphasis added).

> servicers continue to pursue foreclosure during the loan modification process. The enforcement actions require the servicers to ensure that foreclosures are not pursued once a mortgage has been approved for modification and to establish a single point of contact for borrowers throughout the loan modification and foreclosure processes. In addition, **the actions require servicers to establish robust oversight and controls pertaining to their third-party vendors, including outside legal counsel, that provide default management or foreclosure services.**
>
> * * *
>
> The enforcement actions do not preclude determinations regarding assessment of civil money penalties, which the OCC is holding in abeyance.

(Emphasis added.)

155. In the wake of these government investigations, LPS's President and Chief Executive Officer Jeffrey Carbiener resigned because of purported "significant health-related reasons," on or around July 7, 2011. According to reports filed with the SEC, Mr. Carbiener's total compensation package for 2010 was $8,429,693.

156. On February 7, 2012, a grand jury in Columbia, Missouri, issued criminal indictments of LPS's DocX subsidiary and its founder Lorraine Brown on charges of forgery and making false declarations in mortgage documents. The indictments, which consist of 136 counts, allege that a person whose name appears on 68 notarized deeds of release did not actually sign the paperwork. If convicted, DocX may be fined as much as $10,000 for each forgery conviction and $2,000 for each false declaration conviction, and Ms. Brown may be imprisoned for up to seven years.

G. Defendants Had Prior Notice That Their Deceptive Conduct Violated the Ohio Consumer Sales Practices Act

157. At all relevant times, Defendants were on notice that submitting fraudulent mortgage assignments and other fraudulent mortgage documents is illegal.

158. Among other things, filing a frivolous foreclosure action is sanctionable pursuant to Civil Rule 11 and Ohio Rev. Code § 2323.51, where Defendants knew or should have known that an alleged mortgagee lacked standing to foreclose. *See, e.g., Mainsource Bank v. Winafeld*, 5th Dist. No. 2008 CA 00001, 2008-Ohio-4441 (affirming the trial court's award of sanctions and attorneys' fees in favor of the mortgagor for frivolous conduct where the foreclosure plaintiff had not yet been assigned the underlying mortgage and thus lacked standing as it was not the real party in interest).

159. Furthermore, judicial decisions put the Defendants on notice that the use of false documents in the attempt to collect a debt violates the Fair Debt Collection Practices Act ("FDCPA") and the Ohio Consumer Sales Practices Act ("OCSPA").

160. Forgery is a felony in Ohio. The Ohio Revised Code provides that:

> (A) No person, with purpose to defraud, or knowing that the person is facilitating a fraud, shall do any of the following:
>
> (1) Forge any writing of another without the other person's authority;
>
> (2) Forge any writing so that it purports to be genuine when it actually is spurious, or to be the act of another who did not authorize that act, or to have been executed at a time or place or with terms different from what in fact was the case, or to be a copy of an original when no such original existed;
>
> (3) Utter, or possess with purpose to utter, any writing that the person knows to have been forged.

Ohio Rev. Code § 2913.31

161. In *Delawder v. Platinum Financial Services*, 443 F. Supp. 2d 942 (S.D. Ohio 2005), the court upheld claims for violations of the OCSPA against a debt collector and the law firm that represented it in an underlying debt collection action where the plaintiff alleged that the defendants relied on a false affidavit. Indeed, "filing a complaint to collect a debt and attaching an affidavit misrepresenting the debt collector's legal claim to the debt...states a claim under

Section 1345.02(B)(10)" of the OCSPA. *Id.* at 953 (*citing Hartman v. Asset Acceptance Corp.*, 2004 U.S. Dist. LEXIS 24845, at *21 (S.D. Ohio Sept. 29, 2004)). The court concluded that "Ohio courts would recognize a cause of action under Section 1345.02(B)(10) for all deceptive debt collection practices, including a...deceptive lawsuit to collect a debt." *Id.*

162. Courts continue to follow *Delawder*, which is further entrenched as the law of Ohio.

163. In *Turner v. Lerner, Sampson & Rothfuss*, 776 F. Supp. 2d 498 (N.D. Ohio 2011), plaintiffs alleged that the defendant: (a) filed foreclosure actions knowing that it did not have the means of proving the ownership of the debts, and (b) knowingly executed misleading affidavits and unauthorized assignments of the notes to its clients. *Id.* at 506. The court denied the defendant's motion to dismiss, holding that such conduct is actionable under the FDCPA and the OCSPA. *Id.* at 506, 509-510 (*citing Delawder*, 443 F. Supp. 2d at 953).

164. In *Munger v. Deutsche Bank*, 2011 U.S. Dist. LEXIS 77790 (N.D. Ohio July 18, 2011), the court found that the plaintiffs stated a claim under the FDCPA where the defendant filed a foreclosure action with actual knowledge that the assignment was invalid and that it was not possible for the defendant to prove the right to collect on the debt. *Id.* at *21-23. Further, the court held that the plaintiffs stated a claim under the OCSPA because the defendants filed the foreclosure lawsuit without proper standing. *Id.* at *26-28.

165. The Defendants also had notice that any act which violated the FDCPA would also violate the OCSPA. *See, e.g., Delawder*, 443 F. Supp. 2d at 953 ("a violation of the FDCPA is automatically also a violation of" the OCSPA).

166. Specifically, the practice of "robo-signing" affidavits in debt collection actions violates the FDCPA and the OCSPA. *See Brent v. Midland Funding, LLC*, 2011 U.S. Dist.

LEXIS 98763, at *6-7 (N.D. Ohio September 1, 2011) (*citing Midland Funding LLC v. Brent*, 644 F. Supp. 2d 961 (N.D. Ohio 2009)).

167. Thus, Defendants had notice that their conduct was illegal and deceptive under Ohio law.

V. PLAINTIFFS' EXPERIENCES

A. Plaintiff Linda A. Clark

168. On April 21, 2011, LPS network law firm LS&R filed a foreclosure complaint in Cuyahoga County Court of Common Pleas on behalf of "The Bank of New York Mellon Trust Company, National Association fka The Bank of New York Trust Company, N.A. as successor to JPMorgan Chase Bank N.A. as Trustee for RASC 2004KS7" (hereinafter, "Bank of New York") against Plaintiff Linda A. Clark. A copy of the April 21, 2011 Complaint in Foreclosure is attached as **Exhibit I**. As shown below, Bank of New York did not have standing to foreclose.

169. Defendant LPS referred Ms. Clark's foreclosure case to defendant LS&R, which was required to pay referral and other fees to LPS in exchange for receiving this case.

170. At all relevant times, defendant LS&R knew or should have known that there was no competent or credible evidence its client, Bank of New York, held Ms. Clark's note or mortgage, and therefore, LS&R had no reasonable basis for asserting that Bank of New York had standing to foreclose against Ms. Clark.

171. Even though there was no of evidence of Bank of New York's standing to foreclose on Ms. Clark, defendant LS&R wrongfully initiated and prosecuted a foreclosure action against her on behalf of Bank of New York.

172. Although Ms. Clark's mortgage was originated by Home Loan Corporation DBA Expanded Mortgage Credit ("Home Loan Corp."), MERS is designated as the nominal mortgagee on Ms. Clark's mortgage, *i.e.*, Ms. Clark's mortgage is what is commonly known in

the mortgage industry as a "MOM loan." As a MOM loan, the note was severed from the mortgage at the time of origination. MERS had no interest in or claim to the note and the note was effectively unsecured.

173. On June 30, 2011, the Cuyahoga County Court of Common Pleas entered an order granting Ms. Clark's motion to dismiss Bank of New York's foreclosure complaint because, the Court concluded, Bank of New York had failed to prove that it had standing to foreclose because it had failed to adduce evidence of a valid assignment of the mortgage from MERS to JPMorgan Chase Bank N.A., and thus, there was no evidence that JPMorgan Chase Bank N.A. had legal capacity to assign the mortgage to Bank of New York – the entity that brought the foreclosure. Specifically the Court held as follows:

> UPON CONSIDERATION OF DEFENDANT LINDA CLARK'S MOTION TO DISMISS FILED ON 6/14/11 AND PLAINTIFF'S BRIEF IN OPPOSITION TO SAID MOTION FILED ON 6/23/11, THE COURT RULES IN FAVOR OF DEFENDANT LINDA CLARK GRANTING HER MOTION TO DISMISS. PLAINTIFF FAILED TO SHOW A PROPER CHAIN OF ASSIGNMENTS OF THE MORTGAGE IN ITS AMENDED COMPLAINT OF 5/9/11. PLAINTIFF ATTACHED EVIDENCE OF THE ASSIGNMENT OF THE MORTGAGE FROM "JP MORGAN CHASE BANK AS TRUSTEE FKA THE CHASE MANHATTAN BANK AS TRUSTEE" TO PLAINTIFF, HOWEVER, PLAINTIFF FAILED TO SHOW ANY EVIDENCE INDICATING AN ASSIGNMENT OF THE WITHIN MORTGAGE FROM THE ORIGINAL MORTGAGEE, "MERS AS NOMINEE FOR HOME LOAN CORPORATION DBA EXPANDED MORTGAGE CREDIT" TO "JP MORGAN CHASE BANK AS TRUSTEE FKA THE CHASE MANHATTAN BANK AS TRUSTEE." CONSEQUENTLY, **PLAINTIFF FAILED TO ESTABLISH STANDING IN ITS AMENDED COMPLAINT** AND THE COURT DISMISSES THE WITHIN CASE IN ITS ENTIRETY WITHOUT PREJUDICE PURSUANT TO THE HOLDING IN WELLS FARGO V. JORDAN, 2009 OHIO 1092, 2009 OHIO APP LEXIS 881. COSTS TO PLAINTIFF. FINAL. COURT COST ASSESSED TO THE PLAINTIFF(S). CLPAL 06/29/2011 NOTICE ISSUED.

(Emphasis added.)

174. Plaintiff Linda Clark suffered real economic harm as a direct result of the frivolous foreclosure action commenced and prosecuted by LS&R, including incurring

substantial legal fees and foreclosure-related fees when Defendants' client, Bank of New York, lacked the standing to institute the foreclosure proceeding in the first instance.

B. Plaintiffs Jeff and Julie Doehner

175. On December 10, 2009, LPS network law firm LS&R filed a foreclosure complaint in the Cuyahoga County Court of Common Pleas on behalf of "Deutsche Bank National Trust Company, as Trustee in trust for the benefit of the Certificate holders for Argent Securities Trust 2005-W3, Asset-Backed Pass-Through Certificates Series 2005-W3" (hereinafter "Deutsche Bank"), against Mr. and Mrs. Doehner. A copy of the December 10, 2009 Complaint in Foreclosure is attached as **Exhibit J**. As shown below, Deutsche Bank did not have standing to foreclose.

176. Defendant LPS referred Mr. and Mrs. Doehner's foreclosure case to defendant LS&R, which was required to pay referral and other fees to LPS in exchange for receiving this case.

177. At all relevant times, defendant LS&R knew or should have known that there was no competent or credible evidence its client, Deutsche Bank, held Mr. and Mrs. Doehner's note and mortgage, and therefore, LS&R had no reasonable basis for asserting that Deutsche Bank had standing to foreclose against Mr. and Mrs. Doehner.

178. Even though there was no of evidence of Deutsche Bank's standing to foreclose on Mr. and Mrs. Doehner, defendant LS&R wrongfully initiated and prosecuted a foreclosure action against them on behalf of Deutsche Bank.

179. Mr. Doehner's mortgage in the amount of $102,000 was originated by Argent Mortgage Company, LLC on July 28, 2005. However, Argent Mortgage Company, LLC was not a party in the foreclosure action against Mr. and Mrs. Doehner.

180. Instead, Deutsche Bank's foreclosure complaint alleges that Deutsche Bank was the holder of a note on which Mr. Doehner was in default and that it was due "$98,329.06, together with interest at the rate of 7.5750% per year from March 1, 2009, plus court costs, advances, and other charges."

181. Deutsche Bank's foreclosure complaint further alleges that the aforesaid note is secured by a mortgage that was recorded on "August 8, 2005," and that this instrument "was assigned to the plaintiff herein."

182. The allegations in Deutsche Bank's foreclosure complaint are demonstrably false and are contradicted by the mortgage assignments that defendant LS&R filed with the court as exhibits to Deutsche Bank's foreclosure complaint.

183. Attached as Exhibit C to Deutsche Bank's complaint was an assignment of mortgage dated January 20, 2009, purporting to transfer Mr. and Mrs. Doehner's mortgage from "CITI RESIDENTIAL LENDING INC., AS ATTORNEY-IN-FACT FOR ARGENT MORTGAGE COMPANY, LLC" to "DEUTSCHE BANK NATIONAL TRUST COMPANY." This mortgage assignment was executed by known robo-signer Crystal Moore, as Vice President of Citi Residential Lending Inc. as Attorney-in-Fact for Argent Mortgage Company, LLC, and notarized by another notorious robo-signer, Bryan J. Bly.

184. In fact, both Crystal Moore and Bryan Bly were employees of mortgage document fabrication mill Nationwide Title Clearing, in Palm Harbor, Florida, who regularly signed mortgage documents as purported officers of MERS, JPMorgan Chase, Wells Fargo and other lenders. Both Crystal Moore and Bryan Bly admitted during in a video deposition that they signed hundreds of mortgage documents without ever reading them. *See* Mark Puente, "PAPERS CARRY FAMILIAR NAMES," St. Petersburg Times (July 20, 2011). The St. Petersburg Times

reports that in one deposition, Ms. Moore was asked if she ever read any of the documents she signed. She replied, "No." Asked how much time she spent with each document, she said, "a few seconds." When Bly was asked in the deposition what a mortgage assignment is, he replied: "I'm really not sure." *Id.*

185. Moreover, the January 20, 2009, mortgage assignment purports to have assigned Mr. and Mrs. Doehner's mortgage to Deutsche Bank National Trust **more than 3 years after the after the cut-off date in the PSA** for the trust identified in the foreclosure complaint, and thus, is invalid.

186. Attached as Exhibit D to Deutsche Bank's complaint was an assignment of mortgage with an effective date of November 19, 2009 – **more than 4 years after the PSA closing date** – purporting to transfer Mr. and Mrs. Doehner's mortgage from "Deutsche Bank National Trust Company, as Trustee for Argent Securities Inc. Asset-Backed Pass-Through Certificates, Series 2005-W3, under the Pooling and Servicing Agreement dated October 1, 2005" to "Deutsche Bank National Trust Company, as Trustee in Trust for the benefit of the Certificate holders for Argent Securities Trust 2005-W3, Asset-Backed Pass-Through Certificates Series 2005-WJ." This assignment, which purported to assign Mr. and Mrs. Doehner's mortgage to a trust years after the cut-off date in the PSA had passed, was invalid as a matter of law.

187. This mortgage assignment was prepared by DocX and falsely executed by known robo-signers Cheryl Thomas and Brent Bagley, who both signed as "Vice President & Asst. Secretary" of "American Home Mortgage Servicing, Inc., Attorney-In-Fact for Deutsche Bank National Trust Company, as Trustee for Argent Securities Inc. Asset-Backed Pass-Through

Certificates, Series 2005-W3, under the Pooling and Servicing Agreement dated October 1, 2005."

188. As detailed by Lynn E. Szymoniak, Esq. in a July 1, 2010 memorandum, Cheryl Thomas was an employee of LPS who regularly signed mortgage assignments as an officer of AHMSI, Deutsche Bank National Trust Company, MERS, and various other servicing companies and lenders. Cheryl Thomas routinely signed these assignments to trusts years after the closing date of the trusts. She also routinely signed assignments for mortgage companies that had filed for bankruptcy years before the effective date of the assignment.

189. This complaint was dismissed by the Cuyahoga County Court of Common Pleas on April 8, 2010 for failure to prosecute because defendant LS&R was unable to produce evidence of ownership which was needed in order to file a dispositive motion by the deadline set by the court.

190. On February 28, 2011, defendant LS&R filed a second foreclosure complaint on behalf of Deutsche Bank against Mr. and Mrs. Doehner, which was substantially similar to the foreclosure complaint filed on December 10, 2009, and included the exact same fabricated mortgage assignments as the first complaint, as well as an equally invalid assignment of mortgage drafted and executed by LS&R that attempted in 2011 to assign the Doehners' mortgage into a trust that had closed in 2005. A copy of the February 28, 2011 Complaint in Foreclosure is attached as **Exhibit K**.

191. The complaint falsely alleged that Deutsche Bank was the "holder" of Mr. Doehner's note when the note was payable to Argent Mortgage Company, LLC and did not have an endorsement.

192. Mr. and Mrs. Doehner suffered real economic harm as a direct result of the frivolous foreclosure actions commenced and prosecuted by LS&R, including incurring substantial legal fees and foreclosure-related fees when Defendants' client, Deutsche Bank, lacked the standing to institute the foreclosure proceeding in the first instance.

C. Plaintiff Nina Lowery

193. On or about July 20, 2007, LPS network law firm LS&R filed a complaint for foreclosure in the Mahoning County Court of Common Pleas on behalf of "Wells Fargo Bank, N.A. as Trustee for Option One Mortgage Loan Trust 2005-3 Asset-Backed Certificates, Series 2005-3 c/o Option One Mortgage Corporation" ("Wells Fargo") against Plaintiff Nina Lowery. A copy of the July 20, 2007 Complaint in Foreclosure is attached as **Exhibit L**. As shown below, Wells Fargo did not have standing to foreclose.

194. Defendant LPS referred Ms. Lowery's foreclosure case to defendant LS&R, which was required to pay referral and other fees to LPS in exchange for receiving this case.

195. At all relevant times, defendant LS&R knew or should have known that there was no competent or credible evidence its client, Wells Fargo, held Ms. Lowery's note or mortgage, and therefore, LS&R had no reasonable basis for asserting that Wells Fargo had standing to foreclose against Ms. Lowery.

196. Even though there was no of evidence of Wells Fargo's standing to foreclose on Ms. Lowery, defendant LS&R wrongfully initiated and prosecuted a foreclosure action against her on behalf of Wells Fargo.

197. Ms. Lowery's mortgage in the amount of $236,250.00 was originated by H&R Block Mortgage Corporation on January 6, 2005. However, H&R Block Mortgage Corporation was not a party in the foreclosure action against Ms. Lowery.

198. The foreclosure complaint alleged that Wells Fargo was "the holder and owner" of the note for Ms. Lowery's mortgage. The foreclosure complaint further alleged that Wells Fargo was the holder of the mortgage given to secure Ms. Lowery's loan. These allegations were false and without any evidentiary support.

199. On October 30, 2007, defendant LS&R filed a Motion for Summary Judgment on behalf of Wells Fargo seeking entry of a judgment against Ms. Lowery in the amount of "$232,599.72, together with interest thereon from April 1, 2007 at 11.5 percent per annum." Wells Fargo's Motion for Summary Judgment is attached as **Exhibit M**.

200. In support of Wells Fargo's summary judgment motion, defendant LS&R filed an affidavit dated October 30, 2007, which was signed by Laura Hescott as "Assistant Secretary of Option One Mortgage Corporation as servicing agent of Wells Fargo Bank, N .A. as Trustee for Option One Mortgage Loan Trust 2005-3 Asset-Backed Certificates, Series 2005-3."

201. Contrary to the representations in the affidavit, Laura Hescott was neither an employee of Wells Fargo nor Option One Mortgage Corporation, but was actually an employee of defendant LPS Default Solutions, who worked in its Mendota Heights, Minnesota office.

202. Laura Hescott is a known robo-signer who regularly signs affidavits and mortgage assignments for use in foreclosures without personal knowledge or verification of the facts attested to therein, while purporting to be an officer of numerous institutions, including Washington Mutual, Deutsche Bank, IndyMac, Saxon Mortgage Services and MERS. *See, e.g.*, *Deutsche Bank Nat'l Trust Co. v. Wilson*, Dkt. No. A-1384-09T1, 2011 N.J. Super. Unpub. LEXIS 122, at *2 (N.J. Super. Ct. App. Div. Jan. 19, 2011) (rejecting "bona fides" of assignment executed by Laura Hescott, where she signed as assistant Vice President of Washington Mutual Bank); *Indymac Bank, FSB v. Bethley*, 2009 NY Slip Op 50186U, at 1-2 (N.Y. Sup. Ct. 2009)

(Laura Hescott signed an affidavit as Vice President of MERS regarding assignment of mortgage to IndyMac. The court rejected this affidavit, noting that in another case Laura Hescott had executed an affidavit as Vice President of IndyMac); *Indymac Bank, FSB v. Boyd*, 2009 NY Slip Op 50094U, at 2 (N.Y. Sup. Ct. 2009) (Laura Hescott signed an affidavit as Vice President of IndyMac); *Deutsche Bank Trust Co. Ams. v. Peabody*, 2008 NY Slip Op 51286U, 2 (N.Y. Sup. Ct. 2008) (Laura Hescott signed an affidavit as an officer of Deutsche Bank); *LaSalle Bank Nat'l Ass'n v. Street*, 5th Dist. No 08 CA 60, 2009-Ohio-1855, ¶ 17 (Laura Hescott signed as "AVP" of Saxon Mortgage Services).

203. Ms. Hescott's affidavit is invalid because it is not based on her personal knowledge of any of the facts asserted therein or a review of Wells Fargo's records.

204. Ms. Hescott's affidavit falsely states that Wells Fargo "is the holder of the note and mortgage which are the subject of the within foreclosure action."

205. On the contrary, Defendants failed to adduce any competent or credible evidence that Wells Fargo is the holder of the note or the mortgage, or that Wells Fargo had standing to foreclose against Ms. Lowery. Nonetheless, defendant LS&R pressed its foreclosure action and, on January 16, 2008, obtained a summary judgment in the amount of $232,599.72 for Wells Fargo against Ms. Lowrey. Thereafter, Ms. Lowery's home was scheduled for a sheriff's sale on May 24, 2011.

206. On May 18, 2011, Ms. Lowery filed a motion to stay sheriff's sale and a motion to vacate the decree of foreclosure. The Mahoning County Court of Common Pleas granted the motion to stay the sheriff's sale.

207. Defendant LS&R withdrew the property from sale on May 23, 2011.

208. Wells Fargo lacked standing to foreclose because it is not the holder of Ms. Lowery's note and mortgage. Indeed, the promissory note attached to the foreclosure complaint does not bear the necessary endorsement to transfer the mortgage to the trust and no assignment of mortgage was filed before the 2005 cut-off date listed in the PSA to transfer her mortgage into the trust.

209. Plaintiff Nina Lowery's case is currently on appeal where she will attempt to get a judgment reversed after Defendant LS&R actively concealed evidence regarding the lack of legal capacity of its client to sue.

210. Plaintiff Nina Lowery suffered real economic harm as a direct result of the frivolous foreclosure action commenced and prosecuted by LS&R, including incurring substantial legal fees and foreclosure-related fees when Defendants' client, Wells Fargo, lacked the standing to institute the foreclosure proceeding in the first instance.

D. Plaintiff John Whiteman

211. On or about February 23, 2011, LPS network law firm MDK filed Complaint for Foreclosure in the Court of Common Pleas, Franklin County, Ohio, on behalf of "Deutsche Bank National Trust Company, as Trustee for Argent Securities Inc., Asset-Backed Pass-Through Certificate, Series 2006-M1 c/o American Mortgage Servicing, Inc." (hereinafter, "Deutsche Bank"), against plaintiff John Whiteman. A copy of the February 23, 2011 Complaint in Foreclosure is attached as **Exhibit** N. As shown below, Deutsche Bank did not have standing to foreclose.

212. Defendant LPS referred Mr. Whiteman's foreclosure case to defendant MDK, which was required to pay referral and other fees to LPS in exchange for receiving this case.

213. At all relevant times, defendant MDK knew or should have known that there was no competent or credible evidence its client, Deutsche Bank, held Mr. Whiteman's note or mortgage, and therefore, MDK had no reasonable basis for asserting that Deutsche Bank had standing to foreclose against Mr. Whiteman.

214. Even though there was no of evidence of Deutsche Bank's standing to foreclose on Mr. Whiteman, defendant MDK wrongfully initiated and prosecuted a foreclosure action against him on behalf of Deutsche Bank.

215. Mr. Whiteman's mortgage in the amount of $236,700 was originated by Argent Mortgage Company, LLC on April 11, 2006. However, Argent Mortgage Company, LLC was not a party in the foreclosure action against Mr. Whiteman.

216. The complaint alleges that Mr. Whiteman defaulted on his mortgage and that, as a result, Deutsche Bank was due $261,352.99 plus interest on the outstanding principal balance.

217. The complaint filed by defendant MDK falsely alleges that Deutsche Bank "is due upon the Note principal in the amount of $261,352.99, plus interest on the outstanding principal balance at the variable rate as set forth in the Note from September 1, 2010, plus late charges and advances" and that Deutsche Bank "is a person entitled to enforce the Note..."

218. The complaint filed by defendant MDK also falsely alleges that Deutsche Bank "is entitled to a decree foreclosing the Mortgage...."

219. The PSA for the trust which purports to hold Mr. Whiteman's mortgage was dated June 1, 2006, and required that all mortgages be assigned and delivered to the trust by a specified cut-off date during 2006. However, Defendants failed to adduce any competent evidence that Mr. Whiteman's mortgage was transferred to the trust by the cut-off date.

220. Contrary to the requirements of the June 1, 2006 PSA, the only evidence adduced by defendant MDK that Deutsche Bank holds Mr. Whiteman's mortgage are belated mortgage assignments that were fabricated by DocX and Nationwide Title Clearing, which are dated **approximately 3 years after the closing date** of the trust that purportedly holds Mr. Whiteman's mortgage.

221. Attached as an exhibit to the foreclosure complaint was a mortgage an assignment that was executed on June 23, 2009 by LPS/DocX employees Linda Green as "Vice President & Asst. Secretary" of Deutsche Bank National Trust, and Tywanna Thomas as "Vice President & Asst. Secretary" of Deutsche Bank National Trust. Contrary to the representations in this assignment, Linda Green and Tywanna Thomas were not officers or employees of Deutsche Bank National Trust and were not authorized to execute mortgage assignments or any other legal documents on its behalf, and therefore, these assignments were invalid.

222. As detailed by Lynn E. Szymoniak, Esq. in a letter to the SEC dated July 14, 2010, Linda Green was an employee of LPS and Docx, who signed several hundred thousand mortgage assignments without reviewing the contents of the documents. Hence she is herself a robo-signer. However, there are many distinctly different versions of the "Linda Green" signature, and, in fact, many other LPS/DocX employees have forged and robo-signed the name "Linda Green". The name "Linda Green" frequently appears on assignments to trusts years after the closing dates of the trust and on assignments as an officer of companies that had filed for bankruptcy and/or were no longer in existence.

223. Job titles falsely attributed to Linda Green include the following:

- Vice President, Loan Documentation, Wells Fargo Bank, N.A., successor by merger to Wells Fargo Home Mortgage, Inc.;

- Vice President, Mortgage Electronic Registration Systems, Inc., as nominee for American Home Mortgage Acceptance, Inc.;
- Vice President, American Home Mortgage Servicing as successor-in interest to Option One Mortgage Corporation;
- Vice President, Mortgage Electronic Registration Systems, Inc., as nominee for American Brokers Conduit;
- Vice President & Asst. Secretary, American Home Mortgage Servicing, Inc., as servicer for Ameriquest Mortgage Corporation;
- Vice President, Option One Mortgage Corporation;
- Vice President, Mortgage Electronic Registration Systems, Inc., as nominee for HLB Mortgage;
- Vice President, American Home Mortgage Servicing, Inc.;
- Vice President, Mortgage Electronic Registration Systems, Inc., as nominee for Family Lending Services, Inc.;
- Vice President, American Home Mortgage Servicing, Inc. as successor-in-interest to Option One Mortgage Corporation;
- Vice President, Argent Mortgage Company, LLC by Citi Residential Lending Inc., attorney-in-fact;
- Vice President, Sand Canyon Corporation f/k/a Option One Mortgage Corporation;
- Vice President, Amtrust Funding Services, Inc., by American Home Mortgage Servicing, Inc. as Attorney-in-fact; and
- Vice President, Seattle Mortgage Company.

224. Tywanna Thomas is another infamous DocX robo-signer. As detailed by Lynn E. Szymoniak, Esq. in a July 1, 2010 memorandum, Tywanna Thomas was an employee of LPS/Docx who signed several hundred thousand mortgage assignments. Hence she was a robo-signer. There are many distinctly different versions of the "Tywanna Thomas" signature, and, in fact, other LPS/DocX employees forged and robo-signed her name as well. The name "Tywanna

Thomas" frequently appears on assignments to trusts several years after the closing dates of the trust and also on many assignments as an officer of companies that had filed for bankruptcy and/or were no longer in existence.

225. Job titles falsely attributed to Tywanna Thomas include:

- Assistant Vice President, American Home Mortgage Acceptance;
- Assistant Vice President, American Home Mortgage Servicing;
- Vice President & Assistant Secretary, Argent Mortgage Company, LLC;
- Assistant Vice President, Deutsche Bank National Trust Company;
- Assistant Vice President, HomeBanc Mortgage Corp.;
- Assistant Vice President, Mortgage Electronic Registration Systems;
- Assistant Vice President, Mortgage Electronic Registration Systems as nominee for ABC;
- Assistant Vice President, Mortgage Electronic Registration Systems as nominee for Colonial Bank;
- Assistant Secretary, Mortgage Electronic Registration Systems as nominee for HLB Mortgage;
- Assistant Vice President, Nationwide Home Loans, Inc. by American Home Mortgage Servicing, Inc. as Attorney In Fact;
- Assistant Vice President, Option One Mortgage Corporation;
- Assistant Vice President, Quick Fund, Inc.;
- Assistant Vice President, Riverside Bank of Gulf Coast; and
- Assistant Vice President, Sand Canyon Corporation.

226. Also attached as an unmarked exhibit to the foreclosure complaint was a mortgage assignment that purported to transfer Mr. Whiteman's mortgage from Argent Mortgage Company, LLC to Deutsche Bank National Trust, which was dated January 20, 2009 – approximately two and a half years after the June 1, 2006 PSA, and thus, on its face legally invalid to assign Mr. Whiteman's mortgage to the trust.

227. Moreover, the January 20, 2009 mortgage assignment bears the signature of the notorious robo-signer Crystal Moore, as purported Vice President of Citi Residential Lending Inc. as Attorney-in-Fact for Argent Mortgage Company, LLC, and notarized by another notorious robo-signer, Bryan J. Bly.

228. In fact, both Crystal Moore and Bryan Bly were employees of mortgage document fabrication mill Nationwide Title Clearing, in Palm Harbor, Florida, and regularly sign mortgage documents as purported officers of MERS, JPMorgan Chase, Wells Fargo and other lenders. Both Crystal Moore and Bryan Bly admitted during in a video deposition that they signed hundreds of mortgage documents without ever reading them. *See* Mark Puente, "PAPERS CARRY FAMILIAR NAMES," St. Petersburg Times (July 20, 2011). The St. Petersburg Times reports that in one deposition, Ms. Moore was asked if she ever read any of the documents she signed. She replied, "No." Asked how much time she spent with each document, she said, "a few seconds." When Bly was asked in the deposition what a mortgage assignment is, he replied: "I'm really not sure." *Id.*

229. A review of the documents maintained by the Recorder of Deeds for Franklin County, Ohio confirms that Argent Mortgage Company, LLC and Deutsche Bank National Trust failed to record a timely assignment of Mr. Whiteman's mortgage. However, defendant AHMSI recorded five additional assignments that were fabricated by DocX during 2009.

230. The documents recorded by defendant AHMSI, include two assignments executed with markedly different "Linda Green" and "Tywanna Thomas" signatures dated May 26, 2009 and August 13, 2009, and three assignments executed by DocX robo-signers Kim French and Tony Raymond dated December 7, 2009. These five assignments are attached as **Exhibit O**.

231. As detailed by Lynn E. Szymoniak, Esq. in a July 1, 2010 memorandum, Kim French is an employee of LPS in Jacksonville, Florida, who routinely executed mortgage assignments as Vice President of AHMSI, which were used in foreclosure cases involving American Home Mortgage Investment Trusts. Kim French has routinely signed these assignments years after American Home Mortgage Acceptance filed for bankruptcy and years after the closing date of the trust. Deutsche Bank is frequently the trustee that forecloses using Kim French assignments.

232. Likewise, Tony Raymond was an employee of DocX, and not an "Assistant Secretary" of AHMSI.

233. All of the DocX assignments of mortgage were invalid attempts to assign Mr. Whiteman's mortgage to Deutsche Bank years after the 2006 cut-off date for the trust. In fact, defendant MDK's preliminary judicial report of John Whiteman's real property acknowledged that some assignments of mortgage were ineffective because the assignor did not have title. Thus, defendant MDK knew about the problems, but initiated and prosecuted that foreclosure action against Mr. Whiteman anyway.

234. Like many unsuspecting homeowners, Mr. Whiteman had no idea about the process used to create the bogus assignments of his mortgage, and instead, he relied on Defendants' misrepresentations to his detriment. Indeed, Defendants wrongfully obtained a

default judgment was against Mr. Whiteman on July 18, 2011, despite their lack of standing to bring this foreclosure.

235. Plaintiff John Whiteman suffered real economic harm as a direct result of the frivolous foreclosure action commenced and prosecuted by MDK, including incurring substantial legal fees and foreclosure-related fees when Defendants' client, Deutsche Bank, lacked the standing to institute the foreclosure proceeding in the first instance.

E. Plaintiffs Laura and Michael Yeager

236. On or about May 14, 2010, LPS network law firm RAC&J filed Complaint for Foreclosure in the Court of Common Pleas, Lake County, Ohio on behalf of "Waterfall Victoria Master Fund Limited c/o Quantum Servicing Corp." (hereinafter "Waterfall Victoria") against Plaintiffs Laura and Michael Yeager. A copy of the May 14, 2010 Complaint in Foreclosure is attached as **Exhibit P**. As shown below, Waterfall Victoria did not have standing to foreclose.

237. Defendant LPS referred Mr. and Mrs. Yeager's foreclosure case to defendant RAC&J, which was required to pay referral and other fees to LPS in exchange for receiving this case.

238. At all relevant times, defendant RAC&J knew or should have known that there was no competent or credible evidence its client, Waterfall Victoria, held Mr. and Mrs. Yeager's note or mortgage, and therefore, RAC&J had no reasonable basis for asserting that Waterfall Victoria had standing to foreclose against Mr. and Mrs. Yeager.

239. Even though there was no of evidence of Waterfall Victoria's standing to foreclose on Mr. and Mrs. Yeager, defendant RAC&J wrongfully initiated and prosecuted a foreclosure action against them on behalf of Waterfall Victoria.

240. The Yeagers' mortgage in the amount of $152,000 was originated by EquiFirst Corporation on October 26, 2006, and lists MERS as the nominee for the lender. However, EquiFirst Corporation is not a party in the foreclosure action against Mr. and Mrs. Yeager.

241. The complaint alleges that Laura Yeager defaulted on her mortgage and that, as a result, Waterfall Victoria was due $164,839.88 plus interest on the outstanding principal balance.

242. The complaint filed by defendant RAC&J falsely alleges that Waterfall Victoria "is due ... the sum of $164,839.88 plus interest at the rate of 7.75% per annum from June 1, 2009 and subject to adjustment as set forth in the note attached hereto." The complaint further alleges that Waterfall Victoria "is the holder of a certain promissory note and note loan modification agreement" between Laura Yaeger and EquiFirst Corporation.

243. Attached to the Note are five undated and unrecorded allonges that purport to document a series of transfers from the originator of the Yeager's mortgage, EquiFirst Corporation, to Waterfall Victoria. However, none of these allonges to the note indicate when, if ever, this Note was purportedly transferred to Waterfall Victoria. These allonges are as follows:

a. The first allonge purports to be payable to "RBS Financial Products, Inc.," with the name "Kyle Tilley" crossed out and "Tasha Covington" is stamped under the signature line as purported "Assistant Vice President" of EquiFirst Corporation.

b. The second allonge purports to be from "RBS Financial Products, Inc. By Barclays Capital Real Estate Inc. DBA HomEq Servicing its Attorney in Fact," payable to "EquiFirst Corporation," and is signed by "Juanita Jennette, Vice President."

c. Third allonge purports to be from "EquiFirst Corporation By Barclays Capital Real Estate Inc. DBA HomEq Servicing its Attorney in Fact" payable to "Waterfall Victoria Master Find, LTD," and is signed by "Juanita Jennette, Vice President."

d. The fourth allonge purports to be from "Waterfall Victoria Master Fund, LTD By Barclays Capital Real Estate Inc. DBA HomEq Servicing its Attorney in Fact," payable to "Waterfall Victoria Master Fund 2008-1 Grantor Trust Series A," and signed by "Juanita Jennette, Vice President."

e. The final allonge purports to be from "Waterfall Victoria Master Fund 2008-1 Grantor Trust Series A," payable to "Waterfall Victoria Master Fund Limited," and signed by "N. Glen Brooks, Attorney In Fact."

244. Each allonge to the Note is unendorsed and contains no indicia whatsoever as to when any of these instruments were created or when they were affixed to the Note. Thus, these allonges are inadequate to establish valid chain of endorsement or transfer of the Note to Waterfall Victoria by the deadline set forth in the governing documents for the transfer of the Note to the securitization trust.

245. The PSA for the trust which purports to hold Mr. and Mrs. Yeager's mortgage required that all mortgages be assigned and delivered to the trust by a cut-off date of December 1, 2006. However, Defendant RAC&J failed to adduce any competent evidence that Mr. and Mrs. Yeagers' mortgage was transferred to the trust by the cut-off date.

246. The assignment of mortgage from "MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. ... as nominee for EQUIFIRST CORPORATION, its successors and assigns," to "DEUTSCHE BANK NATIONAL TRUST COMPANY, AS

TRUSTEE FOR THE REGISTERED HOLDERS OF BOUNDVIEW HOME LOAN TRUST 2OO6-EQ2 ASSET-BACKED CERTIFICATES, SERIES 2006-EQ2," which was executed on of May 30, 2007 by Scott Anderson, approximately six months after the trust by a cut-off date of December 1, 2006, and thus, on its face legally invalid to assign Mr. and Mrs. Yeager's mortgage to the trust.

247. This mortgage assignment is also invalid because Scott Anderson, who executed the assignment as "Vice President" of "MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. ACTING SOLELY AS NOMINEE FOR EQUIFIRST CORPORATION," is not an officer of MERS and did not have authority to execute this assignment. On the contrary, "Scott Anderson" has been identified as "a known robosigner," for, among others, MERS, HSBC Bank USA, N.A., and Ocwen Loan Servicing, LLC, and "whose signature is reported to have appeared in at least four different variations on mortgage assignments." *HSBC Bank USA, N.A. v Taher*, 2011 NY Slip Op 51208U, at 4-5 (N.Y. Sup. Ct. 2011) ("His claims of wearing different corporate hats and the variations in the scrawls of initials used for his signature on mortgage documents has earned Mr. Anderson notoriety as a robosigner."); *HSBC Bank USA, N.A. v Betts*, 2008 NY Slip Op 31170U, at 3 (N.Y. Sup. Ct. Apr. 23, 2008) ("Mr. Anderson, in [one case] ... swore in an affidavit to be HSBC's servicing agent, while in another decision ... he swore in the assignment, as in the instant case, to be Vice President of MERS."). Thus, this assignment of mortgage is invalid and failed to transfer the Yeager's mortgage to the trust, which meant the trust could not assign the mortgage to Waterfall Victoria and thus, Waterfall Victoria lacked standing to foreclose.

248. Defendant RAC&J knew that Waterfall Victoria lacked standing to foreclose because the original preliminary judicial report (which includes a report from a title search

company) filed by RAC&J was prepared on September 18, 2009, but the assignment of mortgage was not created or executed until May 7, 2010.[26] The September 18, 2009 title report was prepared by Michael F. Lorber, an attorney who works at RAC&J's in-house title company.

249. The September 18, 2009 title report falsely listed Waterfall Victoria as the "guaranteed party" on the Yeager's mortgage long before the mortgage was purportedly assigned to Waterfall Victoria, on May 7, 2010.

250. After Waterfall Victoria received the September 18, 2009 title report, another RAC&J attorney, F. Peter Costello, created the assignment of mortgage that purported falsely to transfer ownership of the mortgage to Waterfall Victoria. In other words, Waterfall Victoria hired RAC&J's in-house title company to determine what documents it needed foreclose on the Yeagers, and then it hired RAC&J to create those documents.

251. Defendants wrongfully obtained a default judgment against Laura and Michael Yeager on January 31, 2011, despite their lack of standing to bring this foreclosure. The Yeagers appealed this judgment obtained after Defendant RAC&J actively concealed evidence regarding the lack of legal capacity of its client to sue.

252. Plaintiffs Laura and Michael Yeager suffered real economic harm as a direct result of the frivolous foreclosure action commenced and prosecuted by RAC&J, including incurring substantial legal fees and foreclosure-related fees when Defendants' client, Waterfall Victoria, lacked the standing to institute the foreclosure proceeding in the first instance.

[26] In Ohio, a foreclosing plaintiff must file a preliminary judicial report with the court. *See* Ohio Rev. Code §2329.191. The preliminary judicial report is essentially a title report that lists, among other things, any mortgages, assignments of mortgage, judgment liens, and unpaid taxes. If a bank owns a mortgage, then the mortgage should be recorded in the bank's name in the country recorder's office, or an assignment of mortgage should be recorded.

VI. DAMAGES

253. Plaintiffs and the Class suffered real economic harm as a direct and proximate result of Defendants' misconduct, as alleged above. Consequently, Plaintiffs and the Class are entitled to monetary damages.

254. Members of the Class who were involved in foreclosure actions that were commenced and prosecuted using false, forged and/or fabricated mortgage documents, and who relied upon such mortgage documents, and who (i) lost their homes as a result of default judgments, (ii) unsuccessfully contested such foreclosure actions, or (iii) voluntarily gave up their homes under the threat of foreclosure, whether by way of a deed-in-lieu of foreclosure transaction or a short sale, suffered damages including, but not limited to:

a. Loss of the down payments on their homes;

b. Loss of their investments in any improvements they made to their homes;

c. Deficiency judgments for the principal balance of loans not recovered in sheriff sales of their homes;

d. Diminished ability and/or opportunities to obtain other mortgages due to damaged credit ratings;

e. Diminished ability and/or opportunities to obtain residential leases due to damaged credit ratings; and

f. Fees for privately-retained defense counsel.

255. Members of the Class who successfully defended foreclosure actions or whose mortgages were reinstated prior to the completion of foreclosure actions, suffered damages including, but not limited to:

a. Attorneys' fees for privately-retained defense counsel; and

b. Other fees and charges, including but not limited to legal fees, title search fees, property appraisals, property inspections, and property preservation and maintenance fees.

VII. CLASS ALLEGATIONS

256. Plaintiffs repeat and reallege every allegation above as if set forth herein in full.

A. The Injunctive Relief Sub-Class

257. Plaintiffs bring this action pursuant to Rules 23(A) and (B)(2) of the Ohio Rules of Civil Procedure, on behalf of themselves and a sub-class seeking injunctive relief exclusively (the "23(B)(2) Class"), consisting of:

> All Ohio citizens who were (a) defendants in judicial foreclosure actions on first lien mortgages on their homes that were purportedly held by securitization trusts, and that were knowingly initiated and prosecuted by Defendants on behalf of parties that lacked legal standing to do so, and (b) who were damaged by Defendants' abusive foreclosure practices, including: (i) preparing, executing, and notarizing fraudulent court documents and assignments of mortgages and other property records that were used to initiate and prosecute such foreclosures, and (ii) imposing inflated, unfair, unreasonable and/or fabricated fees for "default management services."

258. Excluded from the 23(B)(2) Class are governmental entities, Defendants, their affiliates and subsidiaries, Defendants' current employees and current or former officers, directors, agents, and representatives, and their family members.

259. Plaintiffs do not know the exact size or identities of the members of the proposed 23(B)(2) Class, since such information is in the exclusive control of Defendants. Plaintiffs believe that the 23(B)(2) Class encompasses many hundreds and perhaps thousands of

individuals whose identities can be readily ascertained from Defendants' books and records. Therefore, the proposed 23(B)(2) Class is so numerous that joinder of all members is impracticable.

260. All members of the 23(B)(2) Class have been subject to and affected by a uniform course of conduct by Defendants alleged herein. There are questions of law and fact that are common to the 23(B)(2) Class that predominate over any individual questions. These questions include, but are not limited to the following:

a. whether Defendants commenced foreclosure actions on behalf of clients whom they knew or should have known lacked standing to foreclose;

b. whether Defendants or their agents forged, fabricated and/or falsified documents for the purpose of assisting its clients in instituting and/or prosecuting foreclosure actions on behalf of clients whom they knew or should have known lacked standing to foreclose;

c. whether the promissory notes executed by Plaintiffs and the 23(B)(2) Class were properly and timely endorsed and delivered to the trusts that purported to hold such notes prior to the cut-off dates of the trusts' respective PSAs;

d. whether Defendants engaged in a conspiracy to commit fraud against Plaintiffs and the 23(B)(2) Class;

e. Whether Defendants made and/or assisted others in making materially false and misleading representations to Plaintiffs, the 23(B)(2) Class and the courts concerning their clients' standing to bring foreclosures;

f. Whether Defendants' conduct violates the Ohio Consumer Sales Practices Act and corresponding regulations; and

g. Whether the Court can order and enter injunctive relief.

261. The claims of the individual named Plaintiffs are typical of the claims of the 23(B)(2) Class and do not conflict with the interests of any other members of the 23(B)(2) Class in that both Plaintiffs and the other members of the 23(B)(2) Class were subject to the same conduct, were subject to foreclosures initiated and prosecuted on behalf of parties who lacked standing to bring such foreclosures, and relied upon invalid mortgage assignments that were fabricated by Defendants in order to bring these frivolous foreclosure actions.

262. The individual named Plaintiffs will fairly and adequately protect the interests of the 23(B)(2) Class. Plaintiffs are committed to the vigorous prosecution of the 23(B)(2) Class' claims and have retained attorneys who are qualified to pursue this litigation and have experience in class actions, including consumer protection actions.

263. A class action is superior to other methods for the fast and efficient adjudication of this controversy. A class action regarding the issues in this case does not create any problems of manageability.

264. This putative class action meets the requirements of Ohio R. Civ. P. 23(B)(2).

265. Defendants have acted or refused to act on grounds that apply generally to the 23(B)(2) Class, so that final injunctive relief or corresponding declaratory relief is appropriate with respect to the 23(B)(2) Class as a whole.

B. The Monetary Damages Sub-Class

266. Plaintiffs bring this action pursuant to Rules 23(a) and (B)(3) of the Ohio Rules of Civil Procedure, on behalf of themselves and a sub-class seeking monetary damages exclusively (the "23(B)(3) Class"), consisting of:

All Ohio citizens who were (a) defendants in judicial foreclosure actions on first lien mortgages on their homes that were purportedly held by securitization trusts, and that were knowingly initiated and prosecuted by Defendants on behalf of parties that lacked legal standing to do so, and (b) who were damaged by Defendants' abusive foreclosure practices, including: (i) preparing, executing, and notarizing fraudulent court documents and assignments of mortgages and other property records that were used to initiate and prosecute such foreclosures, and (ii) imposing inflated, unfair, unreasonable and/or fabricated fees for "default management services."

267. Excluded from the 23(B)(3) Class are governmental entities, Defendants, their affiliates and subsidiaries, Defendants' current employees and current or former officers, directors, agents, and representatives, and their family members.

268. Plaintiffs do not know the exact size or identities of the members of the proposed 23(B)(3) Class, since such information is in the exclusive control of Defendants. Plaintiffs believe that the 23(B)(3) Class encompasses many hundreds and perhaps thousands of individuals whose identities can be readily ascertained from Defendants' books and records. Therefore, the proposed 23(B)(3) Class is so numerous that joinder of all members is impracticable.

269. Based on the size of the mortgages at issue, Plaintiffs believe that the amount in controversy is in excess of twenty-five thousand dollars and exceeds $5 million.

270. All members of the 23(B)(3) Class have been subject to and affected by a uniform course of conduct by Defendants alleged herein. There are questions of law and fact that are

common to the 23(B)(3) Class that predominate over any individual questions. These questions include, but are not limited to the following:

a. whether Defendants commenced foreclosure actions on behalf of clients whom they knew or should have known lacked standing to foreclose;

b. whether Defendants or their agents forged, fabricated and/or falsified documents for the purpose of assisting its clients in instituting and/or prosecuting foreclosure actions on behalf of clients whom they knew or should have known lacked standing to foreclose;

c. whether the promissory notes executed by Plaintiffs and the 23(B)(3) Class were properly and timely endorsed and delivered to the trusts that purported to hold such notes prior to the cut-off dates of the trusts' respective PSAs;

d. whether Defendants engaged in a conspiracy to commit fraud against Plaintiffs and the 23(B)(3) Class;

e. Whether Defendants made and/or assisted others in making materially false and misleading representations to Plaintiffs, the 23(B)(3) Class and the courts concerning their clients' standing to bring foreclosures;

f. Whether Defendants' conduct violates the Ohio Consumer Sales Practices Act and corresponding regulations; and

g. Whether the Court can order statutory damages.

271. The claims of the individual named Plaintiffs are typical of the claims of the 23(B)(3) Class and do not conflict with the interests of any other members of the 23(B)(3) Class in that both Plaintiffs and the other members of the 23(B)(3) Class were subject to the same conduct, were subject to foreclosures initiated and prosecuted on behalf of parties who lacked

standing to bring such foreclosures, and relied upon invalid mortgage assignments that were fabricated by Defendants in order to bring these frivolous foreclosure actions.

272. The individual named Plaintiffs will fairly and adequately protect the interests of the 23(B)(3) Class. Plaintiffs are committed to the vigorous prosecution of the 23(B)(3) Class' claims and have retained attorneys who are qualified to pursue this litigation and have experience in class actions, including consumer protection actions.

273. A class action is superior to other methods for the fast and efficient adjudication of this controversy. A class action regarding the issues in this case does not create any problems of manageability.

274. This putative class action meets the requirements of Ohio R. Civ. P. 23(B)(3).

VIII. CAUSES OF ACTION

COUNT I – FRAUD

275. Plaintiffs repeat and re-allege every allegation above as if set forth herein in full.

276. Plaintiffs bring this claim on their own behalf and on behalf of each member of the Class.

277. Defendants knowingly or recklessly caused foreclosure complaints, motions and other pleadings to be filed in this State's courts based on fabricated mortgage assignments and other bogus documents, which falsely represented the identities of the owners and/or holders of Plaintiffs' notes and mortgages with the intent that Plaintiffs, the courts, and country recorder's offices would rely upon such representations.

278. Defendants' misrepresentations in foreclosure complaints and other pleadings concealed from Plaintiffs and the Class, as well as the courts and county recorders offices the true facts that the foreclosure actions against Plaintiffs, as detailed herein, were brought on behalf of parties who lacked standing to foreclose.

279. Plaintiffs and the Class, as well as the courts and county recorders offices justifiably relied upon Defendants' misrepresentations.

280. At all relevant times, the identity of the owner and/or holder of Plaintiffs' notes and mortgages was material to the transactions at hand, including but not limited to the foreclosure actions initiated and prosecuted by Defendants on behalf of parties that lacked standing.

281. Plaintiffs and the Class were harmed as a direct and proximate result of Defendants' misrepresentations, including but not limited to Defendants' false assignments of mortgages, foreclosure complaints and other pleadings which contained such misrepresentations.

282. Defendants willfully behaved in bad faith by representing that their clients had standing to foreclose on Plaintiffs and the Class, when they knew or should have known that they did not own and/or hold Plaintiffs' notes and mortgages and did not have standing to foreclose.

283. Defendants willfully intended to defraud Plaintiffs and the Class and their conduct has been so egregious that punitive damages should be awarded.

COUNT II – OHIO CONSUMER SALES PRACTICES ACT VIOLATIONS (As to All Defendants)

284. Plaintiffs repeat and re-allege every allegation above as if set forth herein in full.

285. Plaintiffs bring this claim on their own behalf and on behalf of each member of the Class.

286. This is a claim for violations of the Ohio Consumer Sales Protection Act ("OCSPA"), Chapter 1345.

287. Plaintiffs are consumers as defined by O.R.C. §1345.01.

288. Defendants are suppliers as defined by O.R.C. §1345.01.

289. Plaintiffs' mortgages and Defendants' debt collection practices alleged herein were consumer transactions because they were primarily for personal, family or household use.

290. Defendants violated O.R.C. §1345.02 by committing unfair, deceptive or unconscionable acts or practices in connection with consumer transactions.

291. Defendants committed unfair, deceptive and unconscionable acts in violation of O.R.C. §1345.02(4) by knowingly bringing deceptive foreclosure lawsuits against Plaintiffs and the Class and also made fraudulent assignments of mortgage notes in attempt to support standing to sue.

292. Defendants also made false or misleading representations to Plaintiffs and the Class, which were unfair, deceptive and unconscionable practices in violation of O.R.C. §§1345.02(A) and 1345.02(B)(10) by filing with the courts and county recorders offices fraudulent assignments of mortgage notes and pleadings that incorporated these false assignments.

293. Plaintiffs suffered injury proximately caused by Defendant's misconduct.

294. Accordingly, under the OCSPA, each Plaintiff is entitled to noneconomic statutory damages of five thousand dollars for each violation of the OCSPA, trebling of noneconomic damages under the OCSPA, punitive damages to the extent such damages are available under the OCSPA, prejudgment interest, attorney fees and costs incurred to litigate this claim, and such other damages permitted under the OCSPA.

COUNT III – CONSPIRACY TO COMMIT FRAUD

295. Plaintiffs repeat and re-allege every allegation above as if set forth herein in full.

296. Plaintiffs bring this claim on their own behalf and on behalf of each member of the Class above.

297. In a malicious combination, Defendants entered into a conspiracy whereby they agreed to have LPS's and/or its subsidiaries, including DocX, and LPS network law firms create bogus note endorsements and assignments of mortgages of real property that violated the trusts' cut off dates stated in the governing documents for these trusts.

298. Defendants acted in furtherance of their conspiracy by supplying information about loans to its subsidiaries, including DocX, and LPS' network law firms.

299. Defendants acted in furtherance of the conspiracy by creating bogus note endorsements and assignments of mortgages of real property.

300. Defendants used these false documents in order to initiate and prosecute foreclosure actions on behalf of entities that lacked standing to foreclose.

301. Defendants' improper actions allowed Defendants' clients to wrongfully obtain foreclosure judgments, sheriff's sales of homes and evictions against Plaintiffs and the Class when such clients lacked standing to commence such legal proceedings in the first instance.

302. The fraud committed by the Defendants against Plaintiffs and the Class was an unlawful act independent of the conspiracy itself.

303. Plaintiffs and the Class have suffered damages as a direct and proximate result of Defendants' conspiracy alleged herein, including, but not limited to, attorneys' fees and costs incurred in their defense of the underlying foreclosure actions brought by Defendants and to litigate this claim.

COUNT IV – SLANDER OF TITLE (As to All Defendants)

304. Plaintiffs repeat and re-allege every allegation above as if set forth herein in full.

305. Plaintiffs bring this claim on their own behalf and on behalf of each member of the Class.

306. Each of the Plaintiffs had an ownership interest in the title to his or her property as set forth in detail above.

307. Defendants caused to be recorded assignments of mortgage concerning each of the Plaintiffs' properties. As described in detail above, each assignment of mortgage contained false and misleading statements of fact and was executed by individuals who did not hold the positions that they purported to hold and lacked legal authority to execute such documents on behalf of the parties who they purported to represent.

308. Each of the assignments of mortgage concerning the Plaintiffs' properties was defective and invalid to transfer ownership of the mortgage because it was executed and recorded after the cut-off dates specified in the PSAs for the trusts that Defendants claimed were the holders of each of the Plaintiffs' mortgages.

309. Defendants knew, or should have known, that the assignments of mortgage were improper and invalid. Any publication of an ownership interest in Plaintiffs' properties was, therefore, false.

310. The recording of each assignment of mortgage published false information to third parties.

311. Defendants did not and could not have reasonably believed that they had in fact a valid claim against Plaintiffs' properties which they were entitled to record.

312. As a result of said wrongful publication of an ownership interest in the Plaintiffs' property, Plaintiffs named in this claim for relief have incurred and will continue to incur attorneys' fees and costs related to this litigation, in an amount to be proven at trial.

313. Additionally, with respect to Plaintiffs who were caused to vacate their homes by Defendants' foreclosure actions, sheriffs' sales, and eviction actions that were premised on the

aforesaid false assignments of mortgage, Plaintiffs have incurred moving expenses and expenses for replacement housing in an amount to be proven at trial.

314. The Defendants described in this count knew that they were fabricating mortgage assignments and instituting foreclosure proceedings that were untruthful and have caused a cloud to be placed on the title of the property of the Plaintiffs named in this claim for relief, and as to others similarly situated.

315. As a proximate result of this slander of title the Plaintiffs, and others similarly situated, have suffered injuries and damages.

COUNT V – INJUNCTIVE RELIEF (As to All Defendants)

316. Plaintiffs repeat and re-allege every allegation above as if set forth herein in full.

317. Plaintiffs bring this claim on their own behalf and on behalf of each member of the 23(B)(2) Class.

318. Plaintiffs and members of the 23(B)(2) Class have no adequate remedy at law to stop these unlawful foreclosures and evictions.

319. Plaintiffs and the 23(B)(2) Class will suffer irreparable harm from the loss of their homes and Defendants will suffer no harm because no payments are owed to them on account of the notes and mortgages, and any foreclosures pursued by Defendants have been, will be, and are unlawful.

320. Plaintiffs request an injunction against any foreclosure or eviction arising from the false and misleading assignment of mortgage executed after the cut-off date in the governing documents for the securitization trusts which purport to hold Plaintiffs' and the 23(B)(2) Class' mortgages, as alleged herein.

IX. PRAYER FOR RELIEF

WHEREFORE, the Plaintiffs respectfully request the following relief:

a. Certify this case as a class action and appoint the named Plaintiffs to be Class representatives and their counsel to be Class counsel;

b. With respect to the 23(B)(2) Class:

i. Enter a judgment declaring the acts and practices of Defendants complained of herein to constitute violations of law, including the Ohio Consumer Sales Practices Act;

ii. Grant a permanent or final injunction enjoining Defendants' agents and employees, affiliates and subsidiaries, from continuing to harm Plaintiffs and the members of the 23(B)(2) Class in the manner complained of herein;

iii. Declare that mortgage assignments created and executed after the cutoff date specified in a securitization trust's governing documents are invalid and do not confer standing upon the trustee of a securitization trust to bring a foreclosure action;

iv. Stay all pending foreclosure actions in the State of Ohio in which LPS is the default servicer and where the trustee has relied on mortgage assignments executed after the cutoff date specified in the securitization trust's governing documents;

v. Order Defendants to conduct internal investigations of all completed foreclosures in the State of Ohio to determine whether such foreclosures were based on forged and/or invalid mortgage assignments executed after the cutoff date specified in the securitization trust's governing documents;

vi. Order Defendants to provide notice to homeowners and the Courts regarding forged and/or invalid mortgage assignments that were used in foreclosure proceedings against such homeowners during the relevant period;

vii. Order Defendants to provide an accounting of fees charged to homeowners in tainted foreclosure actions;

viii. Order Defendants to establish a procedure to re-open completed foreclosures where the property is still owned and/or controlled by the entity that served as plaintiff in such foreclosure actions;

ix. Enter an order setting aside all foreclosures where the entity that served as plaintiff in such foreclosure actions relied upon LPS-created mortgage assignments.

x. Order Defendants to adopt and enforce a policy that requires appropriate training of their employees and agents regarding the initiation and prosecution of foreclosures; and

xi. Grant Plaintiffs and the 23(B)(2) Class such other and further injunctive relief as this Court finds necessary and proper.

c. With respect to the 23(B)(3) Class:

i. Enter a judgment declaring the acts and practices of Defendants complained of herein to constitute violations of the Ohio Consumer Sales Practices Act;

ii. Award to the Plaintiffs and the 23(B)(3) Class statutory damages under the Ohio Consumer Sales Practices Act;

iii. Award to the Plaintiffs and the 23(B)(3) Class trebling of noneconomic damages under the Ohio Consumer Sales Practices Act;

iv. Award to the Plaintiffs and the 23(B)(3) Class punitive damages to the extent such noneconomic damages are available under the Ohio Consumer Sales Practices Act;

v. Award to the Plaintiffs and the 23(B)(3) Class prejudgment interest;

vi. Award Plaintiffs and the 23(B)(3) Class the costs of this action, including the fees and costs of experts, together with reasonable attorneys' fees; and

vii. Grant Plaintiffs and the 23(B)(3) Class such other and further damages as this Court finds necessary and proper.

X. JURY TRIAL DEMANDED

Plaintiffs demand a trial by jury on all issues so triable.

Respectfully submitted,

DATED July 23, 2012

KAUFMAN & COMPANY, LLC

By: _____

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