



**IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE**

STEVEN HILL, Derivatively on Behalf of  
Lender Processing Services, Inc.,

Plaintiff,

C.A. No. \_\_\_\_\_

v.

LEE A. KENNEDY, ALVIN R. (PETE)  
CARPENTER, PHILIP G. HEASLEY,  
DAVID K. HUNT, JAMES K. HUNT,  
SUSAN E. LESTER, JEFFREY S.  
CARBIENER, JOHN F. FARRELL, JR., and  
LORRAINE BROWN,

Defendants,

and

LENDER PROCESSING SERVICES, INC., a  
Delaware Corporation,

Nominal Defendant.

**VERIFIED STOCKHOLDER DERIVATIVE COMPLAINT**

Plaintiff Steven Hill brings this action derivatively on behalf of Lender Processing Services, Inc. (“LPS” or the “Company”) (the “Complaint”) against the Individual Defendants who are either members of the LPS Board of Directors (the “Board”), or former directors and officers of LPS. The allegations of this Complaint are based on the personal knowledge of Plaintiff, with respect to his own actions, and on information and belief (including investigation of counsel, a review of LPS’s books and records pursuant to a Section 220 request) as to all other matters alleged.

## SUMMARY OF ACTION

1. LPS, a Delaware corporation, is a publicly-owned provider of mortgage processing and default management services to the mortgage lending industry. Among other services, LPS has provided document preparation and execution services to mortgage lenders and others.

2. In the spring of 2011, Plaintiff, who has continuously held shares of LPS common stock since September 30, 2008, became concerned with the manner in which LPS was being managed, because of widespread publicity about LPS's unlawful conduct in its mortgage foreclosure business. LPS was accused of: (i) improperly splitting fees with lawyers engaged in foreclosure actions; (ii) falsifying mortgage foreclosure documents through the use of so-called "robo-signers"; and (iii) using faulty, unauthorized and, sometimes, simply false paperwork to support foreclosure proceedings against homeowners.

3. Accordingly, on or about May 25, 2011 Plaintiff used the "tools at hand" and made a request of LPS pursuant to Section 220 of the Delaware General Corporation Law for books and records with, *inter alia*, a goal of discovering whether a majority of the then Board of Directors had the requisite independence and disinterest to fairly and in good faith act upon a shareholder demand to take corrective action. (Plaintiff's May 25, 2011 Section 220 Demand is attached as Exhibit A).

4. Plaintiff's counsel received, under a confidentiality stipulation, hundreds of pages from Defendants primarily consisting of Board and Committee minutes and

packages by which the Board and Board committees were informed about the unlawful practices in LPS's mortgage foreclosure business. Most of the unlawful activities occurred at two subsidiaries: DocX, LLC and LPS Default Solutions. Based upon a review of these documents, Plaintiff and his counsel determined that *a majority* of the then-current directors probably possessed the requisite independence and disinterest to review a shareholder demand impartially. However, it was questionable whether a minority of the Board, including members of the Audit Committee, who were specifically charged with oversight of the Company's compliance with legal and regulatory requirements and minimizing legal and regulatory risk, had the requisite independence and disinterest.

5. Accordingly, on or about December 30, 2011, Plaintiff, through his counsel, sent a letter to the Board of LPS (the "Demand" or "Demand Letter," attached as Exhibit B), demanding that the Board "commence legal proceedings against each of the current and former officers, executives and members of the Board responsible for harming the Company." Plaintiff expected the Board to conduct a good-faith, reasonable investigation of the Demand, make a determination in a reasonable time in the Company's best interest, and inform Plaintiff as to what action the Board had taken in response to the Demand.

6. Now, more than thirteen months later, the Board has failed to respond substantively to the Plaintiff's Demand, despite the Company having spent hundreds of millions of dollars in settlements, attorneys' fees, and litigation expenses, and the former President and CEO of DocX having pled guilty to three separate felony indictments. The

Board's inaction, in effect a "response delayed," is a breach of their fiduciary duties, including their duty to act in good faith, and thus not protected by the business judgment rule. To prevent injustice to the Company where it is apparent that material corporate rights would not otherwise be protected, Plaintiff initiates this stockholder derivative action.

### **THE PARTIES**

7. ***Plaintiff Steven Hill*** ("Plaintiff") is, and at all relevant times was, a stockholder of LPS. Plaintiff purchased his first shares of LPS common stock on September 30, 2008 and has held LPS shares continuously since that date. Plaintiff has agreed to hold some shares of LPS until the conclusion of this litigation.

8. ***Nominal Defendant Lender Processing Services, Inc.*** is a Delaware corporation with its principal place of business at 601 Riverside Avenue, Jacksonville, Florida 32204. LPS is a publicly owned company whose common shares are traded on the New York Stock Exchange ("NYSE") under the symbol "LPS." Before July 2, 2008, LPS was wholly owned by Fidelity National Information Services, Inc. ("FIS"). FIS, itself, was majority-owned by Fidelity National Financial, Inc. until November 2006.

9. ***Defendant Lee A. Kennedy*** ("Kennedy") has served as a Director of the Company since its spinoff from FIS, as Executive Chairman from September 2009 through the present, and as interim President and CEO from July to October 2011.

10. ***Defendant Alvin R. (Pete) Carpenter*** ("Carpenter") has served as a Director of the Company since 2009. Carpenter is also chair of the Corporate

Governance and Nominating Committee (“Governance Committee”), and a member of the Compensation Committee.

11. **Defendant Philip G. Heasley** (“Heasley”) has served as a Director of the Company since 2009. Heasley is also a member of the Compensation Committee and the Governance Committee.

12. **Defendant David K. Hunt** (“D. Hunt”) has served as a Director of the Company since 2010. D. Hunt is also chair of the Compensation Committee and the Risk and Compliance Committee (“Compliance Committee”) and a member of the Audit Committee. D. Hunt has also served continuously on the Board of Directors of FIS, LPS’s former parent, from June 2001 to the present and is currently a member of both the audit and compensation committees of FIS.

13. **Defendant James K. Hunt** (“J. Hunt”) has served as a Director of the Company since 2008. J. Hunt is also chair of the Audit Committee and a member of the Compensation Committee.

14. **Defendant Susan E. Lester** (“Lester”) has served as a Director of the Company since 2010. Lester is also a member of the Audit Committee, the Governance Committee and the Compliance Committee.

15. **Defendant Jeffrey S. Carbiener** (“Carbiener”) was President and CEO of the Company from its spinoff from FIS until July 2011. Carbiener was a Director of the Company from 2009 until 2011, and continues to serve as a senior advisor to the Board.

16. *Defendant John F. Farrell, Jr.* (“Farrell”) served as a Director of the Company from 2009 until December 2011. Farrell was also a member of the Audit Committee and the Governance Committee.

17. *Defendant Lorraine Brown* (“Brown”) was co-founder of DocX, LLC and served as chief executive officer of DocX. In mid-2005, Fidelity National Financial Inc. (“FNF”) purchased DocX from Defendant Brown and her partners. Upon the merger of FNF and FIS in 2006, DocX fell under the ownership of FIS. In 2008 DocX and some other business lines were spun off into LPS, and at that time DocX was formally rebranded as “LPS Document Solutions, a Division of LPS.” Defendant Brown then became the President and Senior Managing Director of LPS Document Solutions.

18. Defendants Kennedy, Carpenter, Harris, Heasley, D. Hunt, J. Hunt, and Lester are referred to collectively as the “Director Defendants.”

19. Defendants Kennedy, Carpenter, Harris, Heasley, D. Hunt, J. Hunt, Lester, Carbiener, Farrell and Brown are collectively referred to as the “Individual Defendants.”

## **SUBSTANTIVE ALLEGATIONS**

### **Underlying Breach of Fiduciary Duty**

#### **Background of LPS**

20. LPS was formed in 2008 as a spin-off of FIS. It describes itself as the “market leader” in mortgage processing and default management services in the United States. *See, e.g.*, the 2010, 2011, and 2012 10-Ks, Item 1 stating: “We are a provider of integrated technology and services to the mortgage lending industry, with market leading positions in mortgage processing and default management services in the U.S.” Among

its clients are the nation's largest mortgage lenders, including Wells Fargo, JPMorgan Chase, and Bank of America. LPS offers a variety of technologies and services that assist its lender customers in all aspects of the mortgage lending process, from the initiation of loans through the foreclosure process.

21. LPS consists of two principal reporting segments: Technology, Data and Analytics; and Loan Transaction Services. These two segments accounted for 31% and 69% of LPS's 2010 revenues, respectively. Loan Transaction Services is further divided into Loan Facilitation Services and Default Management Services. In 2010, Default Management Services accounted for approximately 68% of revenues within the Loan Transaction Services business segment. The primary wrongdoing, described in this lawsuit, arose in LPS's Default Management Services segment, and it occurred from at least January 1, 2008 through at least the end of December 2010. The secondary wrongdoing, which underlies this lawsuit, is the refusal of the Director Defendants to commence legal proceedings against the disloyal directors and officers who permitted the Company to suffer substantial harm.

22. In 2009, the Default Management Services segment accounted for an all-time high of \$1.137 billion in revenues. In 2010, however, revenues for the segment decreased to \$1.060 billion. By 2011, revenues for the segment had further dropped to \$816 million, representing a 28% decrease from 2009.

23. According to LPS, its default management services allow its customers to "outsource the business processes necessary to take a loan and the underlying real estate securing the loan through the default and foreclosure process."

24. Facilitating its default management services is a system known as “LPS Desktop” (formerly known as “NewTrak”). LPS Desktop is a workflow management system that allows automation of much of the foreclosure process. Documents, invoices, and other mortgage file data are maintained in LPS Desktop, which provides a centralized access point for LPS and its customers, agents and vendors.

25. Through LPS Desktop and other technology platforms, such as the Mortgage Service Platform, LPS acts as an intermediary between its lender customers and attorneys who act on their behalf during foreclosure proceedings. The LPS technology platforms allow mortgage lenders to upload mortgage documents and loan records into a computer system accessible by LPS and the foreclosure law firms it pre-approves.

26. The two subsidiaries of LPS which played the most prominent roles in this intermediary function during the period of primary wrongdoing, 2008, 2009 and 2010, are DocX, LLC (“DocX”), based in Alpharetta, Georgia, and LPS Default Solutions, based in Mendota Heights, Minnesota. Although formally rebranded as “LPS Document Solutions,” it continued to be known as DocX throughout the time it was owned by FNF (2005-2006), FIS (2006-2008) and LPS subsequent to July 2008.

### **Robosigning and Surrogate Signing**

27. As the U.S. housing market collapsed in 2007 and 2008, the number of foreclosure proceedings skyrocketed. At the same time, there was a dramatic rise in the filing of fraudulent mortgage documents in foreclosure cases.

28. Persons employed by LPS, primarily its LPS Default Solutions and DocX subsidiaries, were primarily responsible for much of the improper conduct related to mortgage loan default services that resulted in the improper eviction of thousands of Americans from their homes and a blatant fraud on the judicial system.

29. In an Agreed Consent Judgment Entry and Order entered into between LPS and 46 Attorneys General in the Court of Common Pleas, Franklin County, Ohio (attached as Exhibit C) on January 30, 2013, LPS stipulated to ten facts that summarize the extent of its wrongdoing. In summary, LPS admitted that:

- Some mortgage loan documents were signed by employees of LPS that contained defects including unauthorized signatures, improper notarizations, attestations of facts that were not personally known to or verified by the affiant;
- LPS employees routinely recorded mortgage loan documents with known defects in local land record offices throughout the country and signed and verified false documents that were relied on by courts around the country;
- DocX employees were instructed by management to sign mortgage loan documents, not with their own names, but with the names of persons who had authority to sign the documents. This fraudulent practice of submitting fake signatures was known as “surrogate signing”;
- Notaries public retained by DocX executed notarial statements on mortgage loan documents, falsely affirming the identity of the person who, in turn, was falsely swearing to the validity of facts on legal documents;

- DocX knowingly presented such phony documents to local land record offices and courts throughout the country;
- LPS employees executed mortgage loan documents that contained inaccuracies, unauthorized signatures, notarization defects and other deficiencies; and
- DocX and LPS engaged in a practice known as “robo signing.”

30. Robo signing consists of executing documents that are generally automatically produced, with little to no verification of the contents by the person doing the signing. LPS both produced and executed robo signed and surrogate signed mortgage related documents in the tens of thousands during the Relevant Period. Once signed, these unverified documents were often improperly witnessed and notarized, and forwarded to LPS’s customers, or to attorneys who filed them in foreclosure proceedings on behalf of LPS’s lender customers, or to local land record offices.

31. The institutionalized production and execution of unverified documents by LPS predictably led to improper and false documents being filed in judicial foreclosure proceedings, where they were used in support of attempts to take people’s homes. Robo signing, surrogate signing, false notarizations, and “other defects and deficiencies in mortgage loan documents” was endemic within LPS from at least January 1, 2008 through December 31, 2010 before the Company was forced by public outrage, government investigation, and finally Company investigation, to abandon the practice at some time in 2011.

### **Improper Law Firm Dealings**

32. LPS maintained a stable of lawyers and firms in the years 2008, 2009 and 2010, and routinely entered into illegal or improper fee splitting agreements with them. LPS maintained a computerized lawyer referral system for its lender customers. While claiming the referral system consisted of “independent” attorneys, in truth, LPS set up a system that effectively ensured that only lawyers from its approved list would be used by its lender customers in foreclosure proceedings.

33. Most important to the scheme of control maintained by high level LPS employees was limiting access to proprietary information and technology. According to sworn testimony by Bill Newland, First Vice President of Operations for LPS Default Solutions, only lawyers who had entered into agreements with LPS had access to LPS’s databases such as LPS Desktop. Since access to LPS’s databases was a necessary prerequisite for attorneys who worked on cases for LPS’s lender customers, the customers’ choice of attorney was effectively limited to the attorneys pre-approved by LPS.

34. Further, the only source of foreclosure-related income for LPS Default Solutions was fees paid by the attorneys in its network for accessing LPS’s data management software. Lender customers were not charged under this business model, which was entirely dependent on fees – kickbacks – paid by attorneys. Christian Hymer, another Vice President of LPS Default Solutions, testified that LPS was paid an upfront referral fee by an attorney when the attorney was selected to perform some service on

behalf of the lender customer. According to Hymer, network attorneys were referred to as “vendors,” and LPS Default Solutions operated under a “vendor supportive model.”

35. The fees paid to LPS by network attorneys were set by LPS, and network attorneys were unable to negotiate them. Each attorney or firm was required to sign a Network Agreement in order to access LPS’s databases. Included in the Network Agreement was a schedule of fees set by LPS that detailed not only how much attorneys were to bill lender customers for various services, but how much of each fee had to be kicked back by the attorney to LPS. This practice is an illegal fee-sharing agreement between LPS and its network attorneys.

#### **Harm to the Company**

36. As a direct and proximate result of LPS’s outstanding legal issues, LPS’s credit rating has been downgraded by credit rating agencies. On June 3, 2011, *Morningstar* raised LPS’s equity fair value uncertainty rating to “very high,” and lowered its credit rating from BBB to BBB-. The stated reason was “legal issues the company faces as a result of the headlines surrounding lenders’ foreclosure practices.” On August 19, 2011, Moody’s lowered its rating of the liquidity of LPS, and stated it had a negative outlook for the Company. Moody’s indicated the credit ratings could fall if LPS had to pay a “meaningful settlement or regulatory fine.”

37. LPS stock continues to be severely impacted. As of February 5, 2013, the closing price of LPS stock was \$24.52, down from an all-time high of \$43.99 on October 23, 2009.

38. The Company's improper practices and procedures have resulted in at least the following federal and state investigations and lawsuits:

- A lawsuit, captioned *Schneider v. Lender Processing Servs., Inc.*, No. 9:10-cv-80259 (S.D. Fla. filed Feb. 17, 2010), alleging improper assignments of mortgages after the date of transfer and challenging the authority of individuals to execute assignments as officers of various banks and mortgage companies;
- *Thorne v. Prommis Solution Holding Corp., Lender Processing Servs., Inc.*, No. 10-ap-01172 (Bankr. N.D. Miss. filed Sept. 30, 2010), joined in by a unit of the U.S. Department of Justice, alleging illegal fee splitting and unauthorized practice of law;
- Multiple securities class action lawsuits, captioned *City of St. Clair Shores Gen. Emps. Ret. Sys. v. Lender Processing Servs., Inc.*, No. 3:10-cv-1073 (M.D. Fla. filed Nov. 23, 2010), and *Southwest Ohio District Council of Carpenters v. LPS, Inc.*, No. 3:11-cv-00033 (M.D. Fla. filed Jan. 11, 2011), alleging violations of the Securities Exchange Act of 1934;
- A civil complaint filed by the Nevada Attorney General on December 15, 2011 in the District Court for Clark County, alleging various violations of the Nevada Unfair and Deceptive Trade Practices Act;
- Class action, *Clark et al v. Lender Processing Services, et al.*, 12-cv-02187-DAP (N.D. Ohio), filed on behalf of Ohio homeowners who were defendants in foreclosure proceedings initiated and prosecuted by LPS and who were damaged by LPS's abusive debt collection practices
- A criminal indictment filed by the Missouri Attorney General on February 6, 2012, against DocX, LLC, charging various counts of forgery and false certification;

- A criminal information filed against Lorraine Brown by the U.S. Attorney of the Middle District of Florida;
- A criminal indictment for racketeering in Kent County, Michigan filed against Lorraine Brown by the Michigan Attorney General;
- *American Home Mortgage Servicing, Inc. v. Lender Processing Services, Inc., et al.*, No. DC-11-10440 (Tex. Dist. Dallas Cty. Aug. 23, 2011), a breach of contract lawsuit by one of its former clients;
- Civil complaints filed by Attorneys General in the States of Missouri, Colorado and Delaware, that were settled collectively for approximately \$6 million in 2012;
- Civil complaint filed by Attorneys General in 46 states and the District of Columbia that was settled for \$127 million in January 2013;
- Consumer fraud suit filed by the Attorney General of the State of Nevada; and
- The robo-signing and surrogate-signing practices at LPS have also been at issue in numerous bankruptcy cases.

39. LPS has settled many of these litigations, and entered into Consent Decrees and settlement orders at a substantial cost borne entirely by the Company. On January 30, 2013, the Company entered into an omnibus settlement agreement with 46 Attorneys General. It had previously settled with the Attorneys General in Missouri, Colorado and Delaware. Together, the Company's settlements with the Attorneys General alone come to over \$130 million in fines and costs. (*See Exhibit C*).

40. Beginning in late 2010, several banking regulatory agencies conducted an examination of LPS as part of a wider inquiry into improper foreclosure practices. The Acting Comptroller of the Currency testified before the House Subcommittee on Housing and Community Opportunity as to the severity and scope of the foreclosure scandal, stating in part:

[T]he shoddy practices that have come to light, including improperly executed documents and attestations, are absolutely unacceptable. They raise questions about the integrity of the foreclosure process and concerns about whether some homes may have been improperly taken from their owners.

41. In a Consent Order entered into by the Federal Deposit Insurance Corporation (“FDIC”), Federal Reserve Board, Office of Comptroller of the Currency, Office of Thrift Supervision (“Federal Banking Regulators”), and LPS in April 2011, LPS agreed to sweeping oversight of its default operations and document execution practices and to enhance its compliance, internal audit, risk management, and **board oversight** plans, to hire an outside party to review its past practices, and to submit regular reports to the banking agencies. (*See* Exhibit D attached).

42. The portions of the April 2011 Consent Order with Federal Banking Regulators underscore just how woefully inadequate the Board’s oversight had been, thereby permitting LPS subsidiaries to so flagrantly and persistently violate the law. The order directs the Board as follows:

1. Within 60 days of this Order, the board of LPS shall submit to the Agencies an acceptable written plan to strengthen the board’s oversight of default management services that LPS provides to Examined Servicers, including the board’s oversight of risk management, audit,

and compliance programs concerning default management services. The plan shall also describe the actions that the board of directors will take to improve LPS's risk management, audit, and compliance programs, and a timeline for actions to be taken. The plan shall, at a minimum, address, consider, and include:

a) Funding for personnel, systems, and other resources as are needed to carry out LPS's default management services activities and operations in full compliance with Legal Requirements, and the requirements of this Order, taking into consideration current and expected activities, operations, and volumes;

b) Funding for personnel, systems, and other resources as are needed to operate risk management and compliance programs that are safe and sound and that are commensurate with the risk profile of LPS's default management services activities and operations;

c) Steps to ensure that LPS's default management services activities and operations have adequate levels and types of officers and staff to carry out those activities and operations in compliance with Legal Requirements and the requirements of this Order, and taking into account the size and complexity of those activities and operations; that they have officers and staff with the requisite qualifications, skills, and ability to comply with the requirements of this Order; and a timetable for hiring any necessary additional officers and staff; and that they establish satisfactory metrics to measure and ensure the adequacy of staffing levels;

d) Periodic reviews of the adequacy of the levels and types of officers and staff to carry out default management services activities in light of current and expected activities, operations, and volumes, and changes in Legal Requirements;

e) Steps to ensure that risk management, audit, and compliance programs for LPS have adequate levels and types of officers and staff and that they have officers and staff with the requisite qualifications, skills, and ability to

comply with the requirements of this Order, and a timetable for hiring any necessary additional officers and staff;

f) Policies to ensure that the risk management, audit, and compliance programs with respect to default management services activities have the requisite authorities and status within LPS to effectively operate the programs, and that there is adequate coordination with respect to these programs to ensure that any problems or deficiencies that are identified within default management services activities and operations are comprehensively reviewed and remedied;

g) Steps to improve the information and reports that will be regularly reviewed by LPS's board of directors, including operational, compliance, legal, reputational, and other risk assessments, to assess the performance of default management services activities and operations, as well as the risk management and compliance programs and associated functions, including compliance risk assessments, and the status and results of measures taken, or to be taken, to remediate default management services activities and operations deficiencies, and to comply with this Order; and

h) Steps to ensure that LPS timely and effectively communicates with Examined Servicers concerning Legal Requirements and legal proceedings related to default management services that LPS provides to Examined Servicers that may generally affect Examined Servicers, including court decisions related to Mortgage Documents executed by LPS and its employees on behalf of Examined Servicers.

43. According to an LPS Press Release dated February 4, 2013 the securities fraud action (*City of St. Clair Shores Gen. Employees Retirement System v. Lender Processing Services, Inc., et al.*, No. 10-cv-01073-TJC-JBT (M.D. Fla. Nov. 23, 2010)), was settled in January 2013. The amount of the settlement has not yet been disclosed.

44. According to the same Lender Processing February 4, 2013 press release, the breach of contract lawsuit by one of its former clients (*American Home Mortgage Servicing, Inc. v. Lender Processing Services, Inc., et al.*, No. DC-11-10440 (Tex. Dist. Dallas Cty. Aug. 23, 2011)) also was recently settled for an undisclosed amount.

45. LPS and several of its current and former employees have also been sanctioned by courts -- sometimes severely. For example, in one bankruptcy case in Louisiana, LPS was found to have submitted a "sham" affidavit to the court. Both LPS and the employee who signed the affidavit were assessed fines. The same judge deplored what she called the "shoddy practices and sloppy accounting" of LPS and the mortgage services industry.

46. Lorraine Brown, the Chief Executive of DocX and President and Senior Managing Director of LPS Document Solutions, pled guilty to three separate indictments (one in Florida federal court and two in Missouri state court) on or about November 20, 2012. She pled guilty to the following felony charges:

- a. Conspiracy to commit mail and wire fraud. (M.D. Fla. 12-cr-00198-HLA-MCR);
- b. Felony forgery, making a false declaration (Boone County, Missouri, 13th Jud. Cir. of Mo., 12BA-CR00430); and
- c. Felony perjury (Jackson County, Missouri, 16th Jud. Cir. of Mo., 1216-CR03983).

She will be sentenced in federal court on April 4, 2013 and faces up to five years in federal prison. She will be sentenced in state court on April 15, 2013 and faces between

two and three years of incarceration. In addition, on November 26, 2012 Michigan Attorney General Bill Schuette announced that Lorraine Brown had been charged with one count of racketeering, a felony with up to a 20-year sentence, in Kent County's 61<sup>st</sup> District Court for her role in the "nationwide scheme of DocX's practice of robo-signing."

47. The costs incurred by LPS in defending these civil lawsuits, in complying with the April 2011 Consent Order, and in dealing with other litigation and regulatory investigations, is already substantial, and will continue to grow. The Company has already taken an accrual of \$196.4 million (*see* 10-Q for the third quarter of 2012) – since increased by an additional \$48 million (*see* January 31, 2013 press release attached as Exhibit E) – for the legal and regulatory matters based largely on the misconduct outlined in this Complaint.

48. Defendants were aware, or should have been aware, since no later than mid-2009, when the U.S. Department of Justice and Connecticut Attorney General began their investigations (as reported by *Bloomberg* and *Reuters*, respectively), that there were serious issues regarding their mortgage default operations. According to Defendants' admission DocX was not shut down until May 2010. However, LPS's 10-K filed on March 1, 2011 still lists DocX, LLC as one of its subsidiaries. Defendants' slow, misleading, and inadequate response was a breach of their fiduciary duties to the Company.

49. As a result of the Director Defendants' failure to file suit against the wrongdoers, the Director Defendants are causing the entire loss from the litigations,

investigations, settlements, attorneys' fees, expenditures, and reputational harm to be borne solely by the Company.

**THE BOARD'S REFUSAL TO ACT IS WRONGFUL**

50. Plaintiff's December 30, 2011 Demand Letter went unanswered for nearly three months.

51. On March 23, 2012, Executive Vice President, General Counsel and Corporate Secretary of LPS, Todd Johnson, wrote to Plaintiff's counsel asking for any further information that Plaintiff had to support his demand (Exhibit F to this Complaint). Plaintiff's counsel responded by letter dated April 6, 2012 (attached as Exhibit G), referring Mr. Johnson to numerous sources of information that Plaintiff believed should be explored in a good-faith, thorough investigation.

52. Neither Mr. Johnson, nor any other representative of LPS, responded to Plaintiff's counsel's April 6, 2012 letter.

53. On June 6, 2012, nearly six months after Plaintiff's Demand Letter, Plaintiff's counsel received a letter from Board member D. Hunt advising that a "Demand Review Committee" comprised of Defendant David Hunt (Chair), Defendant Sue Lester, and Defendant Alvin (Pete) Carpenter, had been formed to make a recommendation to the full Board regarding the shareholder demand. (Attached as Exhibit H).

54. Plaintiff's counsel responded on June 25, 2012 (Exhibit I) requesting some very rudimentary information from the Demand Review Committee, such as its resolution, a list of persons interviewed, a list of documents produced and a copy of the most critical documents.

55. Neither D. Hunt, nor any other representative of the Demand Review Committee, responded to Plaintiff's counsel's June 25, 2012 letter.

56. As of the date of the filing of this Complaint, neither the Demand Review Committee nor the Board has taken any action in response to the Demand Letter, whether to seek restitution against the disloyal directors and executives who had harmed Nominal Defendant so greatly, or otherwise.

57. A stockholder who makes a demand is entitled to know promptly what action the Board has taken in response to that demand. *Grimes v. Donald*, 673 A.2d 1207, 1218 (Del. 1996), (*overruled on other grounds by Brehm v. Eisner*, 746 A.2d 244 (Del. 2001)). The Director Defendants unreasonable delay in making a determination on Plaintiff's demand to take corrective action is wrongful, unreasonable, and not undertaken in good faith. As will be further described in ¶¶72-75, circumstances that have arisen subsequent to the Demand Letter establish there is no good-faith reason for the Board to refuse to take corrective action against the disloyal directors and officers of the Company.

**A. The Demand Review Committee Was Comprised of Tainted Directors and Lacked the Requisite Independence to Render a Determination Regarding the Shareholder Demand**

58. At the time Plaintiff made his Demand on the Board in December 2011, David Hunt and Lester were serving on the Audit Committee.

59. The task of the Audit Committee of LPS is and has been to be directly responsible to the Board for overseeing legal compliance and evaluating risk management for the Company. Thus, the Audit Committee was tasked with overseeing

that the subsidiaries of LPS, including DocX, LLC and LPS Default Solutions, conducted their operations in compliance with the law. The members of the Audit Committee failed to perform this task successfully by permitting persistent, blatant and systemic violations to occur at DocX and Default Solutions. Breaking the law was, in essence, the business plan for these subsidiaries.

60. Therefore, a committee formed to determine whether or not to pursue the Shareholder's Demand was required to consist only of members who did *not* serve on the Audit Committee during the period of primary wrongdoing, and who were not tainted by their own failure to perform their duties. Only those members of the Board who had not been specifically tasked with oversight responsibility of the Company's compliance with the law would be in a position to impartially decide the Demand.

61. Instead of selecting directors independent of the wrongdoing, the Board selected D. Hunt, a member of the Audit Committee since February 2010, Lester, a member of the Audit Committee since 2010, and Carpenter as the three so-called "independent" members to serve on the Demand Review Committee.

62. Neither D. Hunt, the Chair of the Demand Review Committee, nor Lester were "independent" because they were put in the impossible position of evaluating their own conduct.

63. The Charters of the Audit Committee and the Risk and Compliance Committee set out some of the specific tasks of Board members on those committees. Some of those tasks are listed here:

Audit Committee:

- Review[ing] with management and any internal or external counsel as the Committee considers appropriate, any legal matters (including the status of pending litigation) that may have a material impact on the Company and any material reports or inquiries from regulatory or governmental agencies.
- Review[ing] with the Risk and Compliance Committee and management the adequacy and effectiveness of the Company's procedures to ensure compliance with its legal and regulatory responsibilities, including Section 510(b) of the Gramm-Leach-Bliley Act.
- Establish[ing] procedures for (a) the receipt, retention and treatment of complaints received by the Company regarding accounting, internal accounting controls, auditing matters or potential violations of law and (b) the confidential, anonymous submission by employees of the Company of concerns regarding questionable accounting or auditing matters or potential violations of law.
- Review[ing] requests for and determin[ing] whether to grant or deny waivers of the Company's Code of Business Conduct and Ethics applicable to senior financial officers.

64. In addition to serving as a member of the Audit Committee of LPS, D. Hunt, Chair of the Demand Review Committee, was also a member of the Board of Directors of LPS's parent, FIS, continuously since 2001. DocX became a subsidiary of FIS in 2006. Thus, D. Hunt, as a Board member of FIS, knew about the operations of DocX and had oversight responsibilities for DocX from 2006 onward.

65. The public statements made by LPS have consistently painted LPS as ignorant of the systemic criminal activities of its subsidiary DocX until these were uncovered in November or December 2009, at which time LPS tried to take corrective action. *See, e.g.*, December 10, 2010 Letter to Editor of *Reuters* from Michelle Kersch, Senior Vice President Lender Processing Services (attached as Exhibit J).

66. Had the Board of LPS been prepared to undertake a good-faith investigation of Plaintiff's Demand, they would not have appointed D. Hunt as the Committee's Chair since it would be difficult, if not impossible, for D. Hunt to investigate his own failure to oversee the criminal activities of DocX, by virtue of his position both as a director of FIS and as a director serving on the Audit Committee of LPS. Similarly, a Board acting in good faith would not have selected Lester to serve on any committee investigating Plaintiff's Demand, because it would have been difficult, if not impossible, for Lester to impartially decide the Demand, given her failure to perform her responsibilities as a member of the Audit Committee.

67. The lack of good faith and transparency of the Demand Review Committee is apparent in the manner in which it has interacted with the Plaintiff. Despite a request to do so, the Demand Review Committee has refused to share with Plaintiff even the most basic information about any aspect of the investigation; it would not even provide Plaintiff with the Resolution under which it was purportedly authorized to investigate the claim. The March 23, 2012 letter to Plaintiff's counsel from Company General Counsel and Corporate Secretary (Exhibit F), purportedly soliciting ideas regarding the investigation, appears to be little more than window dressing to create the impression the Committee was actually conducting a good-faith investigation. Plaintiff's counsel's response on April 6, 2012 (Exhibit G) stating that Plaintiff and Plaintiff's counsel would be happy to meet with Mr. Johnson was never answered.

**B. The Discretion of the Court of Chancery Should Be Exercised to Overrule the Inaction by the Demand Review Committee and The Board**

68. A properly formed demand review committee, composed of independent and disinterested directors, empowered to conduct a proper review of the matters in the Demand, has an obligation to: (i) conduct a good-faith reasonable investigation that fully considers the facts raised in the Demand, and (ii) make a reasoned decision on the Demand.

69. Apart from being improperly constituted because of the lack of independence and disinterest of the Demand Review Committee members, the refusal of this Committee and the full Board to render a decision after thirteen months of investigation is unreasonable. While there is no magical period of time to conclude an investigation for a Board committee operating in good faith, thirteen months is much too long.

70. Assuming that the Director Defendants' comments that an investigation into DocX was begun by the Board in late 2009 or early 2010 are true, the Board already should have a great deal of information about the conduct that is the subject of Plaintiff's Demand. Further, much of the factual material for the Demand Review Committee's investigation would have been gathered by counsel LPS retained to defend the various federal and state investigations and lawsuits that were launched against LPS. Therefore, while the Demand Review Committee was required to undertake an independent investigation, much of the ground work was readily available.

71. The Company has suffered significant continued monetary loss by taking an accrual of \$196.4 million for legal and regulatory matters as of September 30, 2012,

up from \$78.5 million as of December 31, 2011. The Company increased its legal and regulatory reserve in the quarter ended December 31, 2012 by an additional \$48 million. The settlements with the Attorneys General alone exceed \$130 million, and it remains unknown how much money the Director Defendants have agreed the Company should pay to defrauded investors in the securities class action.

72. The Company has suffered, and is continuing to suffer, financial harm by a number of measures. For example, as a direct and proximate result of Defendants' breaches of fiduciary duties that resulted in LPS's outstanding legal issues, LPS's credit rating has been downgraded by credit rating agencies. Moreover, the share price remains severely impacted, trading at \$24.52 as of February 5, 2013, down from an all-time high of \$43.99 on October 23, 2009. Accordingly, the Company's cost of raising new capital has been substantially increased – whether through the issuance of debt or equity.

73. There are two principal events that occurred after Plaintiff's Demand which create a reasonable doubt that the Demand Review Committee's and the Board's inaction regarding the Demand was reasonable or made in good faith.

74. First, the guilty pleas of former DocX CEO Lorraine Brown, through which she is exposed to up to five years incarceration and \$250,000 in fines, stands in stark contrast to the Company's refusal to initiate civil action against the guilty directors and officers. There is no reasonable explanation why a Board, acting in good faith, would be unwilling to bring a civil suit against the wrongdoers who harmed the Company, when a criminal defendant decided to plead guilty under the far more stringent reasonable doubt standards. This is particularly true because the felonies to which Brown

pled guilty, arising from “robosigning,” surrogate signing, and forgeries on thousands of mortgage-related documents, required the involvement of many people; it is impossible to believe that Lorraine Brown acted alone. It is incumbent on the Board of LPS to bring a civil suit against Brown and her co-conspirators to seek reimbursement to the Company for losses it sustained.

75. Second, in recent months, the Company has decided to “clean up” numerous civil lawsuits caused by the Board’s lax oversight of its subsidiaries’ operations. In the months of December 2012 and January 2013 alone, the Board of Directors settled a case brought by 46 state attorneys general for \$127 million, settled a shareholder derivative action in an undisclosed amount, and settled the breach of contract action brought by customer AHMSI in an amount undisclosed. The Board also had settled with the Attorneys General in the States of Missouri, Colorado and Delaware for \$6 million after the plaintiff made his Demand.

76. The only group apparently left out of the Company business decision to “come clean” are the directors and officers of the Company who permitted the torrent of litigation, settlements and adverse publicity to befall the Company. Thus, the Company is being required to bear the entire loss because of the Board’s unreasonable failure to seek redress on behalf of the Company. As a result of the Demand Review Committee’s and the Board’s unreasonable failure to act, the material corporate rights of the Company are not being protected. In such a situation, where the Board of Directors’ refusal to act is wrongful, a derivative plaintiff is allowed to bring suit, and the Plaintiff requests that he be authorized to protect the valid interests of the Company.

## **FIRST CAUSE OF ACTION**

### **For Breaches of Their Fiduciary Duties of Loyalty and Good Faith (Against All Defendants)**

77. Plaintiff incorporates by reference each of the foregoing allegations.

78. Defendants are fiduciaries of LPS and of all of its public shareholders and owe to them the duty to conduct the business of the Company loyally and in good faith. The Board of Directors has a duty to respond to a shareholder demand in good faith and in a reasonable manner, and make a decision that is in the best interest of the Company and not that of any particular director.

79. A reasonable investigation must result in a determination in a reasonable period of time. The Defendants' refusal to respond to Plaintiff's Demand thus effectively ignores those requests and is a breach of their fiduciary duties. Moreover, Defendants' refusal to respond to Plaintiff's Demand in a reasonable period of time is the legal equivalent of a "demand denied."

80. As a result of Defendants' breach, LPS is being made to bear the entire financial burden of all the fees, expenses, and settlements incurred as a result of the unlawful activities engaged in by LPS employees, and LPS has suffered and will continue to suffer considerable damage. Defendants' refusal to initiate litigation on behalf of the Company against the wrongdoers is wrongful and not made in good faith.

81. By reason of the foregoing, all Defendants have breached their fiduciary obligations to LPS and its shareholders.

82. LPS and its shareholders have been injured by reason of these breaches. Plaintiff, as a stockholder of LPS, seeks damages and other relief for the Company as set forth below.

**REQUEST FOR RELIEF**

**WHEREFORE**, Plaintiff, on behalf of LPS, requests the entry of an order:

(A) Deciding that the Board's failure to make a determination on the Demand is unreasonable and thus the "demand delayed" is tantamount to a demand denied;

(B) Deciding that the Board's determination to deny the Demand, by inaction, is not taken in good faith and is wrongful;

(C) Authorizing the Plaintiff to pursue a derivative complaint on behalf of the Company against those persons that caused or contributed to the harm suffered by the Company.

(D) Directing LPS to take all necessary actions to reform and improve its corporate governance and internal control procedures to comply with the Sarbanes-Oxley Act of 2002, to properly oversee the activities of its subsidiaries, as well as all other legal requirements to protect the Company and its shareholders from the damaging effects described herein;

(E) Awarding damages to LPS in an amount to compensate for the losses, harm, cost and expense incurred by LPS as a result of Defendants' wrongful conduct;

(F) Awarding Plaintiff the costs and disbursements of this action, including reasonable attorneys', accountants', and experts' fees, costs and expenses; and

(G) Granting such other relief as is appropriate.

DATED: February 12, 2013

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