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**DISTRICT COURT  
CLARK COUNTY, NEVADA**

STATE OF NEVADA, )  
 )  
 ) Plaintiff, )  
 )  
 ) vs. )  
 )  
 ) LENDER PROCESSING SERVICES, INC.; )  
 ) FIDELITY NATIONAL INFORMATION )  
 ) SERVICE, INC.; LPS DEFAULT SOLUTIONS, )  
 ) INC.; DOCX, LLC; LSI TITLE COMPANY; )  
 ) DOES I-XX, )  
 )  
 ) Defendants. )

CASE NO.: A-11-653289-B  
DEPT. NO.: XI

**DATE OF HEARING: January 30, 2014**  
**TIME OF HEARING: 8:30 a.m.**

**STATE OF NEVADA'S OPPOSITION TO DEFENDANTS'**  
**SUPPLEMENTAL BRIEF ON SANCTIONS**

1 **I. INTRODUCTION AND BACKGROUND**

2 The State has complied fully with this Court's orders and has produced thorough  
3 responses to Defendant's pending discovery requests. Defendants have not convincingly  
4 argued that the State's responses are deficient under the discovery rules of the NRCP, nor have  
5 they presented a credible statement of prejudice resulting from the receipt of the State's  
6 responses – on a rolling basis – that are now complete.<sup>1</sup> Instead, Defendants are using a  
7 discovery dispute to argue that the State's allegations in the Third Amended Complaint were  
8 unfounded and to prematurely argue, again, for dismissal of this case before the discovery  
9 process is complete. Defendants' request for dismissal of this case should be denied, and the  
10 State should be permitted to continue pursuing discovery and preparation for trial in this case.

11 Defendants served their first sets of interrogatories and requests for production of  
12 documents on August 12, 2013, twenty-one (21) months after the State filed its original  
13 Complaint in the case and before Defendants produced any documents responsive to the  
14 requests the State served in December 2012. Defendants' requests fell largely into three  
15 categories: (1) requests seeking evidence underlying the Complaint, (2) requests seeking  
16 evidence from the Attorney General's Office relating to an affirmative defense asserting  
17 violations of due process stemming from the criminal indictments of some of LSI Title's  
18 employees, and (3) contention interrogatories seeking detailed summaries of each individual  
19 violation the State intended to prove at trial. Evidence underlying the Complaint was in the  
20 State's hands at the time Defendants served their discovery requests, although not necessarily  
21 in a readily discoverable form. Information related to Defendants' affirmative defense, asserted  
22 for the first time in Answers filed August 21, 2013, had not been previously collected or reviewed  
23 by the State. Information needed to respond to Defendants' contention requests – though  
24 requested *from* Defendants *by* the State in December 2012 – was almost entirely *in Defendants'*  
25

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26  
27 <sup>1</sup> The State's responses were substantially complete on December 16, 2013, when the State had produced  
28 information and documents from its investigation. These included all but a fraction of its documents responsive to  
Defendants' requests and extensive information from witness interviews. The State also provided responses to  
contention interrogatories on December 16, 2013 that identified more than 30,000 DTPA violations largely found in  
documents produced by Defendants on August 30, 2013. The State has provided, concurrently with this filing,  
supplements reflecting approximately 40,000 additional DTPA violations.

1 *hands at the time Defendants served their discovery requests* and was not produced to the State  
2 until nearly three weeks later, on August 30, 2013.

3 The State provided written responses to Defendants' discovery requests on September  
4 19, 2013. These responses set forth the State's theories of liability, identified categories of  
5 documents (as well as examples of those documents) that would be used to prove the State's  
6 case, and identified the witnesses interviewed by the State. The State's responses included  
7 good faith objections, based on Court rules and case law, to certain of Defendants' requests.  
8 The State also advised Defendants that it would produce documents responsive to Defendants'  
9 requests, as well as a privilege log, on October 7, 2013.

10 Defendants demanded a meet-and-confer on September 27, 2013, before the State had  
11 even produced documents that Defendants knew were forthcoming. Defendants asked one  
12 question at the meet and confer: when would the State identify and produce the improperly  
13 executed and notarized Mortgage Documents. The State advised Defendants, as it had advised  
14 the Court during the parties' Rule 16.1 conference that immediately preceded the meet-and-  
15 confer, that it would need several months to review and assess the documents produced by  
16 Defendants less than a month earlier. On October 15, 2013, Defendants filed a Motion to  
17 Compel responses to all pending requests, and asked the Court to overrule a number of  
18 objections that the parties never discussed.

19 The Court overruled the State's objections to Defendants' discovery requests at a hearing  
20 held on November 19, 2013, and ordered the State to provide more complete responses within  
21 thirty (30) days. The Court indicated, however, that certain requests could be fulfilled with less  
22 information than Defendants specifically requested. For example, the Court did not reject the  
23 State's argument that it was unduly burdensome to prepare narrative responses laying out  
24 details about each and every mortgage document that constitutes a violation, rather than simply  
25 identifying the documents by Bates number. Rather, the Court responded by saying "[y]ou didn't  
26 do that, though, Counsel." (Tr. of Hr'g on Defs.' Mot. to Compel Disc. Resps. at  
27 20:11)(hereinafter "Tr."). Similarly, the Court did not direct the State to produce every piece of  
28 information Defendants had sought about the witness interviews, including the date and location

1 of the interview, the name and contact information of the interviewers, and “all facts” provided by  
2 the witness. (*Id.*) Rather, the Court instructed the State that their objections to several  
3 interrogatories, including the witness interview interrogatories, were overruled “to the extent that  
4 if you provide an appropriate privilege log alleging attorney-client or attorney work product, the  
5 Court will consider after a meet and confer occurs between the parties as to whether it was  
6 appropriate for any additional protection.” (Tr. at 28:6-10.) The Court’s final instruction was: “I’m  
7 going to continue this motion for 30 days for you to make a good-faith production and answers to  
8 these interrogatories.” (Tr. at 30:3-5.) The hearing was continued until December 17, 2013, and  
9 the Court did not ask the parties to submit a status report or supplemental briefing in advance of  
10 the hearing.

11         The State served revised responses to the Defendants’ requests on December 16, 2013  
12 that included detailed responses to each of Defendants’ requests. Rather than assert privilege  
13 over attorney notes, the State provided over 100 pages of facts pulled from the State’s witness  
14 interview notes. The State provided descriptions of each category of violation that the State was  
15 alleging, accompanied by spreadsheets listing a total of more than 30,000 individual DTPA  
16 violations identified to date from the documents produced by Defendants in August 2013,  
17 including the accompanying details requested by Defendants, totaling 1,918 pages. The State  
18 provided more detailed narrative responses to many of the Defendants’ interrogatories with  
19 references by Bates number to specific documents supporting the State’s arguments and claims.  
20 On December 16, 2013, the State also provided to Defendants revised versions of its Privilege  
21 Log and Supplemental Privilege Log (including the additional pieces of information about each  
22 logged document that the Court instructed the State to provide), its Second Supplemental  
23 Privilege Log listing five additional documents, and a small production of documents. The State  
24 also produced a small number of documents to Defendants on December 24, 2013, as well as a  
25 Third Supplemental Privilege Log listing two additional documents.

26         On December 16, 2013, the Bureau of Criminal Justice in the Attorney General’s Office  
27 (“Criminal Bureau”), which conducted the criminal investigation that led to the indictment of LSI  
28 Title employees Gary Trafford and Geraldine Sheppard, also served responses to Defendants’

1 discovery requests, which included documents (including recordings of witness interviews),  
2 written responses to interrogatories regarding witness interviews, and a privilege log. The  
3 Criminal Bureau supplemented this with a small production of documents on January 9, 2014.

4 Defendants do not present any genuine issues with the completeness of the State's  
5 discovery responses. Rather than identifying any valid deficiencies in the State's discovery  
6 responses that have prejudiced Defendants in this litigation, they have instead used this briefing  
7 as an opportunity to file what is essentially a Rule 11 motion, attacking the basis for the State's  
8 Complaint, or a premature summary judgment motion, attacking the substance of the evidence  
9 the State has collected to date in this litigation. Neither is appropriate. The State's case is well  
10 founded in fact, the evidence and admissions obtained to date in this case support the State's  
11 allegations, and the State has been forthcoming and responsive with its evidence in its discovery  
12 responses. Accordingly, sanctions are not warranted or justified under the standards articulated  
13 in *Young v. Johnny Ribeiro Bldg., Inc.* See 106 Nev. 88, 787 P.2d 777 (1990).

14 **II. DEFENDANTS HAVE ARTICULATED NO GENUINE DEFICIENCIES IN THE STATE'S**  
15 **DISCOVERY RESPONSES AND NO COGNIZABLE HARM RESULTING FROM THE**  
16 **DEFICIENCIES ALLEGED**

17 **A. The State Has Met Its Discovery Burdens under the Nevada Rules of Civil**  
18 **Procedure**

19 **1. The State's Revised Discovery Responses, Produced on December 16,**  
20 **2013, Were Fulsome and Met the Requirements of this Court's Rulings**

21 The State provided timely written responses to the Defendants' discovery requests, which  
22 included good faith objections that the State believed were well founded in this Court's rules and  
23 the case law. After receiving a ruling from the Court on those objections on November 19, 2013,  
24 the State moved quickly to prepare full written responses to every discovery request. Those  
25 responses were served within thirty days, as this Court ordered, and Defendants have identified  
26 no genuine deficiencies with them.

27 The State's revised responses provided significant information regarding the State's  
28 investigation of the case, including over 100 pages of narrative interrogatory responses  
describing the details of 80 witness interviews and providing summaries of the facts provided by

1 each witness. The State also provided a more detailed description of its theories of alter ego  
2 and agency liability, and identified by Bates number specific documents it has identified that  
3 support those theories – documents that were produced to the State by LPS. The State also  
4 identified each of the 62 Network Firms that handled Nevada foreclosures, the 184 contracts  
5 memorializing these firms' agreement to participate in LPS Default Solutions's network of  
6 attorneys, and the corresponding Bates numbers for these Network Firm Agreements; the  
7 Agreements are largely identical to one another and were obtained *from* LPS during the State's  
8 pre-Complaint investigation. These Network Agreements are key pieces of evidence in the  
9 State's claims that (1) the Network Firms were improperly controlled by Default Solutions and (2)  
10 they were required to pay - as "admin fees" - a portion of their attorneys' fees to Default  
11 Solutions for each case referred to them by Default Solutions, despite the fact these "admin fees"  
12 appear unrelated to any specific services provided by Default Solutions.

13 The State also undertook an extensive review of the mortgage documents (produced by  
14 Defendants) in an effort to respond to contention interrogatories seeking identification of and  
15 details regarding each individual mortgage document that the State believes constitutes a  
16 violation of the DTPA. Defendants first produced the mortgage documents at issue in this case  
17 on August 30, 2013, almost three weeks *after* serving their contention interrogatories asking the  
18 State to identify each violation of the DTPA. Prior to receiving that production on August 30,  
19 2013, the State had received only a small percentage of the mortgage documents executed by  
20 employees of the Defendants.<sup>2</sup>

21 Identifying the mortgage documents that violate the DTPA in the manner described in the  
22 State's Complaint has been time-consuming – due, in part, to the manner in which documents  
23 and information were produced by Defendants. First, Defendants produced a significant quantity  
24 of mortgage documents without first filtering out documents not signed or notarized by their  
25 employees that are, therefore, not relevant to this case. In the State's First Set of Requests for  
26 Production of Documents ("State's RFPs"), the State asked Defendants to produce documents  
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28 <sup>2</sup> During the State's pre-complaint investigation, it obtained around 3,200 mortgage documents, both from Defendants and from a third party, but the State believes this to be a small percentage of the total number of documents executed by Defendants' employees, based on information provided in witness interviews.

1 reflecting “LPS’s Facsimile Signing, Surrogate Signing or other policies, procedures or practices  
2 whereby an LPS Employee either signed the name of another LPS Employee on Mortgage  
3 Documents or an LPS Authorized Signer signed Mortgage Documents on behalf of an LPS  
4 Client . . .” (See Ex. 1, State’s RFPs at 12.) The only mortgage documents responsive to this  
5 request would be ones signed or notarized by Defendants. However, Defendants responded  
6 with approximately 600,000 mortgage documents (totaling over 1.6 million pages), and explained  
7 in their written responses that, for DOCX and LSI Title Company documents at least, these  
8 Defendants “may not have produced, executed, or notarized each and every one of these  
9 documents, nor were each and every one of the documents ‘Facsimile Signed,’ ‘Surrogate  
10 Signed’ or improperly notarized.” (Ex. 2, Lender Processing Servs., Inc., LPS Default Solutions,  
11 Inc., DOCX, LLC; LSI Title Co. Resps. To State’s RFPs at 7.)(“Defs.’ Resps.”) Based on the  
12 State’s review to date, it appears that Defendants neither signed nor notarized around 15% of  
13 the DOCX documents produced and the vast majority of the LSI Title Company mortgage  
14 documents produced. However, ascertaining this fact has consumed both time and resources,  
15 and these difficulties have made it very challenging to identify the documents relevant to this  
16 case.<sup>3</sup>

17 The State performed electronic searches using the names of known LPS employees and  
18 other targeted search terms to identify mortgage documents within this document set that may  
19 have been executed by Defendants’ employees in the offices identified in the State’s  
20 allegations.<sup>4</sup> These searches have yielded 83,911 documents. The State then reviewed each  
21 document, determined which documents had indeed been executed by Defendants, and coded  
22  
23

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24 <sup>3</sup> Defendants’ interrogatory responses also demonstrate their unwillingness to sift out the relevant mortgage  
25 documents from the irrelevant ones. This position is particularly perplexing because Defendants were, by the time  
26 they responded to the State’s discovery requests, purportedly in the process of completing remediation activities to  
27 satisfy their obligations to federal banking regulators and the 46 states that signed the multistate settlement  
28 agreement with Defendants. Nonetheless, when the State asked Defendants to identify how many mortgage  
documents were executed by Defendants’ employees on behalf of their clients, signed by their employees using the  
names of other employees, and notarized by their employees, Defendants each responded by essentially stating  
that they do not know or are not permitted to say under the terms of their settlement with federal banking regulators.  
(See, e.g., Ex. 3, DOCX, LLC Resps. to State’s Second Set of Interrogs. at 5-6.) The State has filed a motion to  
compel production of documents related to these remediation activities.

<sup>4</sup> DOCX office in Alpharetta, GA, Default Solutions office in Mendota Heights, MN, and LSI Title office in Las Vegas, NV.

1 for the data points that Defendants requested in their interrogatories for those documents.<sup>5</sup> This  
2 information was then provided to Defendants through narrative interrogatory responses  
3 describing the criteria the State used to identify each category of violation and accompanying  
4 spreadsheets providing the Bates number of each mortgage document and the accompanying  
5 details regarding the violation that Defendants had requested. When the State's revised  
6 discovery responses were provided on December 16, 2013, the State had completed its review  
7 of approximately half of the documents identified through the searches described above, and it  
8 produced spreadsheets totaling 1,918 pages listing over 30,000 individual violations identified by  
9 the State. The State has now completed its review of these mortgage documents and is  
10 providing contemporaneously with this brief supplemental interrogatory responses including an  
11 additional 3,325 pages of spreadsheets identifying over 40,000 additional violations. Fifteen  
12 lawyers have been dedicated to this project alone; they have collectively spent more than 5,500  
13 hours on it to date.

14 Although the State has completed its review of the documents it has identified to date as  
15 potential DTPA violations and described each such violation in its interrogatory responses, the  
16 State believes the process of identifying these individual violations will be an ongoing one. First,  
17 problems in the Defendants' production have prevented the State from identifying an unknown  
18 number of other relevant documents that have already been produced. The content of many of  
19 these mortgage documents cannot be searched because the poor image quality of these  
20 documents either prevents any text from being electronically captured by optical character  
21 recognition (OCR) software, or, in many cases, causes the text that is electronically captured to  
22 be inaccurate.<sup>6</sup> For these reasons, the State will likely continue to identify individual documents

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23 <sup>5</sup> Defendants requested the date of each violation, the nature of the transaction at issue in each violation, the parties  
24 to the transaction at issue in each violation, a description of the document or documents evidencing the transaction  
25 at issue in each violation, all facts upon which the State bases its contention that a false representation was made in  
26 connection with the transaction including a description of the alleged false representation, who made the false  
27 representation and to whom the representation was made, and all facts upon which the State' bases its contention  
28 that the representation was knowingly made. In accordance with the State's theory of the case, it identified for each  
violation the Bates number of the mortgage document, the title of the document, the name of the borrower, the  
address of the property at issue, the name of the lender, the execution date of the document, and the notarization  
date of the document.

<sup>6</sup> The State has employed "fuzzy" searches – searches that look for words that are close, but not identical to, the  
search terms – in an effort to solve this problem. However, the State believes, based on random sampling of  
unreviewed documents, that many potentially relevant documents are still not captured through these searches.



1 that reflect violations of the DTPA as it continues to work with this document set. Had  
2 Defendants simply limited their production to those documents that were actually responsive to  
3 the State's requests, many of these issues could have been avoided. Second, Defendants have  
4 not completed their production in response to the State's First Set of Requests for Production.  
5 Any mortgage documents they produce in the future, or that the State obtains from third parties,  
6 must be reviewed, and the State must supplement its interrogatory responses accordingly, on an  
7 ongoing basis. Third, the State is just beginning depositions and expert discovery, which the  
8 State anticipates will inform its understanding of these documents and allow it to continue  
9 refining these lists of violations. Nonetheless, the State believes its interrogatory responses to  
10 be substantially complete, based on the information currently available to it, and the State will  
11 supplement its responses as the discovery process continues.

12 Finally, in accordance with this Court's order, the Criminal Bureau undertook a review of  
13 documents and information from the State's criminal investigation and has provided written  
14 discovery responses, a production of documents, and a privilege log responsive to Defendants'  
15 requests. The Criminal Bureau's production includes: plea and cooperation agreements  
16 between the State and persons employed by LSI Title that were negotiated during the criminal  
17 investigation/proceeding; recordings of witness interviews; documents provided by witnesses  
18 and other materials from the Criminal Bureau's case files; and documents related to the Office  
19 policy on parallel prosecutions. In an effort to maintain the separation of the civil case and the  
20 criminal proceedings, as well as the Office's general practices of maintaining the confidentiality  
21 of criminal investigations, lawyers from the Criminal Bureau handled the collection of documents  
22 and information from the Criminal Bureau's files with guidance from the civil team as needed.  
23 The Criminal Bureau has not, however, been allowed to rely on outside counsel to handle this  
24 work. As a result, this work has proceeded more slowly than it would have if not for the logistical  
25 challenges presented by these ethical precautions. The Criminal Bureau produced documents  
26 and information to Defendants on December 16, 2013 and provided a supplemental production  
27 on January 9, 2014.

28 //

1                   **2.     The State’s Privilege Log Comports with this Court’s Requirements**  
2                   **and is Substantially Complete**

3                   The State possesses a limited number of privileged documents that are responsive to  
4 Defendants’ requests. The State’s privilege logs contain relatively few documents because the  
5 State is withholding little from production. The State has conducted thorough searches for  
6 responsive information, from both the civil team and the criminal team, has produced all  
7 responsive, non-privileged documents, and has provided a thorough privilege log for responsive,  
8 privileged documents.

9                   Only three specific categories of documents that Defendants have requested potentially  
10 include privileged documents: (1) documents relating to the development and implementation of  
11 the ethical wall between the civil and criminal investigations, some of which are protected by the  
12 deliberative process privilege, attorney client privilege or work product privilege (2) witness  
13 statements prepared in anticipation of litigation, which are protected attorney work product, and  
14 (3) work product shared with other law enforcement agencies. Defendants have expressed  
15 skepticism that the State’s privilege log could contain such few documents “after three years of  
16 ‘extensive discovery.’” (Defs.’ Supplemental Br. Concerning Sanctions on Mot. to Compel  
17 Resps. To Defs.’ First Set of Interrogs. & First Req. for Produc. of Docs. at 20.) (“Defs.’ Br.”). The  
18 reason is simple – the fruits of the State’s investigation and discovery are largely not privileged  
19 and have been produced to them.<sup>7</sup> Furthermore, the vast majority of the work that the State has  
20 had to do to identify and log responsive, privileged documents relates to the first and third of  
21 these categories. Neither of these categories of information is evidence from the State’s  
22 investigation or of the allegations in the Complaint, and documents related to these topics had  
23 neither been collected nor reviewed prior to Defendants propounding their discovery requests.

24                   The State’s responses to Defendants’ Requests for Production of Documents – including  
25 its privilege logs – are substantially complete. The overwhelming majority of documents

26 \_\_\_\_\_  
27 <sup>7</sup> The State did originally object to responding to certain interrogatories regarding the details of witness interviews,  
28 on the grounds that responding to these interrogatories would require the State to create attorney work product in  
summarizing facts provided by witnesses and details about how the interviews were conducted. The Court  
overruled those objections. Accordingly, the State produced the requested information in over 100 pages of  
interrogatory responses that detailed where and when each interview was conducted, who was present, and what  
facts were provided by the witness.

1 responsive to these requests are documents that were produced by Defendants and third-parties  
2 to the State, including documents from Defendants' clients and former clients and from  
3 temporary staffing agencies that contracted with Defendants. Defendants' own documents have  
4 been identified by Bates number and third-party documents have all been produced to  
5 Defendants. The State has also conducted a thorough search of its own records to identify  
6 documents responsive to Defendants' requests. The State produced responsive documents on  
7 October 7, November 4, December 16, and December 24, 2013, and logged 19 documents on  
8 the State's privilege logs. The Criminal Bureau produced responsive documents on December  
9 16, 2013 and January 9, 2014, and logged 26 documents on a separate privilege log that was  
10 produced on December 16, 2013. The State believes that its productions are complete, though  
11 the State will comply with its obligation to supplement its production if any responsive documents  
12 are identified in the future that were inadvertently missed during this review process.

13         The State will also comply with its obligation, going forward, to supplement its privilege  
14 logs with new documents that are created or that come into its possession. The State believes  
15 that its understanding of this on-going obligation gave rise to some confusion during the  
16 December 19, 2013 hearing, which the State hopes to dispel now. Because the State has an  
17 ongoing duty to supplement its privilege log, there may be future additions to the log. For  
18 example, under the Court's ruling on Defendants' motion to compel, the State has an ongoing  
19 duty to turn over "all facts" gathered in future conversations with witnesses, as well as the dates  
20 of those interviews, the names of the lawyers conducting those interviews and the names of the  
21 interviewing lawyers' supervisors. The State may seek a protective order relieving it from this  
22 particular on-going obligation. Defendants sought this witness interview information to assess  
23 the information underlying the allegations in the State's complaint and to determine whether the  
24 civil team and criminal team conducted interviews together; any future interviews are irrelevant to  
25 those purposes and are protected work product. But at a minimum, the State will identify the  
26 existence of responsive information on a privilege log. If the State collects statements from  
27 additional witnesses in the future, the State will also be required to add those to its privilege log.  
28 If the State shares (gives or receives) documents reflecting work product with another law

1 enforcement agency, those documents will also be added to the privilege log. However, the  
2 State believes its privilege logs were substantially complete by December 17.<sup>8</sup>

### 3           **3.       The State’s Rule 16.1 Disclosures Are Complete and Appropriate**

4           The State provided its first set of initial disclosures on November 8, 2012, containing 278  
5 witness names, and it updated these disclosures by adding new witness names on January 28,  
6 2013 (137 new names) and October 7, 2013 (21 new names). Defendants first raised any  
7 complaint with the State’s disclosures on November 26, 2013, a year after initially receiving  
8 them. (Decl. of Sheri Ann Forbes at ¶3, attached hereto as Ex. 4.) (“Forbes Decl.”) Defendants’  
9 primary complaints about the State’s disclosures are that they contain the names of potential  
10 witnesses who the state did not interview and that the contact information for certain witnesses is  
11 inaccurate or out of date. Neither concern is valid nor warrants the imposition of sanctions.

12           In its initial disclosures, the State disclosed all of the individuals it identified as being likely  
13 to have relevant information about the case, a significant majority of whom were individuals who  
14 were current or former employees of one of the Defendants. These lists may “[r]ead[ ] like a  
15 personnel directory” (Defs.’ Br. at 17), but they were developed through extensive research using  
16 publicly-available information and a review of documents obtained in the State’s investigation.  
17 Rather than keep this information secret until the State could interview each witness and assess  
18 his or her knowledge, the State disclosed this information, as it was required to do under Rule  
19 16.1.

20           Rule 16.1 requires parties to disclose “[t]he name and, if known, the address and  
21 telephone number of each individual likely to have information discoverable under Rule 26(b),  
22 including for impeachment or rebuttal, identifying the subjects of the information.” NRCPP 16.1(a).  
23 Nothing in the rule requires, as Defendants argue, the State to research and “provide  
24 Defendants with updated and accurate contact information” if the State does not, in fact, possess  
25 such information. Furthermore, Defendants’ arguments regarding the alleged deficiencies in the  
26 State’s disclosures demonstrate that they fundamentally misunderstand what Rule 16.1 requires  
27 – the identities of individuals “likely to have information discoverable under Rule 26(b).” *Id.* The

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28 <sup>8</sup> The State supplemented its privilege log on December 24, 2013 with two documents, which were located before the hearing, but required some investigation to determine whether they were, in fact, privileged.

1 rule does not direct – or, indeed, permit – parties to wait until they have confirmed that a witness  
2 has information directly relevant to the case before disclosing that witness’s identity. Defendants  
3 cite the example of James Albani, whom they allege has never had any involvement with any of  
4 the Defendants. According to the State’s research, an individual named James Albani had  
5 previously worked at Default Solutions, and the State used publicly-available information to  
6 identify what it believed to be accurate contact information for this person. Indeed, Defendants  
7 included a man named James Albani on the list of former Default Solutions employees in their  
8 own initial disclosures, though they provided no contact information for this person. (See Defs.’  
9 Second Supplemental Initial Discl. at 16 (dated Oct. 7, 2013).) When contacted by the State, Mr.  
10 Albani told the State’s attorneys that he was unwilling to be interviewed. (See State’s Revised  
11 Answers to LPS, Inc.’s First Set of Interrogs., DEF Ex. L at 000008.) He did not, at any point  
12 during the State’s very brief conversation with him, say that he had not previously worked at  
13 Default Solutions. Even if a witness is unwilling to be interviewed, he may still be likely to have  
14 discoverable information. Thus, based on the information available to the State – that James  
15 Albani had been employed by one of the Defendants during the time period in which the conduct  
16 alleged in the Complaint was occurring – the State was required to disclose Mr. Albani.

17 Nor does the fact that a witness is not returning Defendants’ phone calls mean that the  
18 witness’s contact information is incorrect or that the witness has no discoverable information. A  
19 far more reasonable explanation under the circumstances presented here – where many former  
20 employees were laid off by Defendants and left to fend for themselves in numerous  
21 investigations into Defendants’ practices – is that Defendants’ former employees do not want to  
22 talk to Defendants. The only way that any party in litigation may compel a witness to provide  
23 information is by subpoena. Defendants are free to do as the State is already in the process of  
24 doing – issuing subpoenas to take the depositions of these witnesses.

25 Furthermore, the Defendants’ complaints about the State’s disclosures are particularly  
26 misplaced, given that the vast majority of the witnesses listed are Defendants’ own current and  
27 former employees. Defendants are in a far better position than the State to know when these  
28 employees worked for LPS, what positions these employees held, and what job responsibilities

1 those positions entailed – and therefore what information these employees are likely to have. At  
2 the time the State made its initial disclosures, Defendants had, according to their own public  
3 statements, conducted extensive internal reviews of the practices alleged in the Complaint.<sup>9</sup>

4 By contrast, Defendants' own initial disclosures and discovery responses were grossly  
5 insufficient. Defendants' first set of initial disclosures provided the names of twenty-seven  
6 witnesses, four of whom were lawyers representing the State. (Forbes Decl., Ex. 4 at ¶4.)  
7 Defendants' first supplement to these initial disclosures was little better, providing only fourteen  
8 new witnesses that the State had not already identified for them. *Id.* When the State  
9 propounded interrogatories on Defendants in December 2012, seeking the identities of LPS  
10 employees who participated in the document execution practices alleged in the Complaint,  
11 Defendants refused to respond until they were ordered to do so by this Court. When they finally  
12 produced responses to these interrogatories on September 26, 2013, they identified almost 500  
13 employees. (*Id.*)<sup>10</sup> Their employee lists failed to identify which specific employees were involved  
14 in document execution, as the interrogatory had asked. Defendants surely possess records  
15 indicating the business units for which each employee worked and each employee's basic job  
16 responsibilities. However, they have refused to provide that information and, instead, fault the  
17 State for not having a more precise list of witnesses in this case.

18 Finally, any prejudice that Defendants have suffered due to out-of-date or inaccurate  
19 contact information in the State's disclosures is due to the fact that Defendants waited a year to  
20 begin attempting to contact witnesses. The interviews conducted by the State during its  
21 investigation occurred over a year ago, and, in many cases, at least two years ago. Witnesses  
22 have moved, changed phone numbers, or changed jobs since that time. The State will, of  
23 course, continue to supplement its disclosures with updated contact information for these  
24 witnesses when it has such information. However, the State cannot provide what it does not  
25 have.

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27 \_\_\_\_\_  
28 <sup>9</sup> See, e.g., Michelle Kersch, *Letter to the Editor of Reuters*, Lender Processing Servs., Inc. (Dec. 10, 2010),  
<http://www.lpsvcs.com/LPSCorporateInformation/NewsRoom/Pages/20101210B.aspx> (last visited Jan. 23, 2014).

<sup>10</sup> Defendants subsequently provided Second Supplemental Rule 16.1 Disclosures on October 7, 2013, which disclosed approximately the same set of witness names.

1           **B. Defendants Have Suffered No Harm that Warrants the Imposition of**  
2           **Sanctions under NRCP 37.**

3           Defendants have not demonstrated any prejudice caused by the State’s discovery  
4 responses, much less the kind of harm required to support an imposition of sanctions under  
5 NRCP 37. The Nevada Supreme Court has explained that a court must consider factors such as  
6 the “degree of willfulness of the offending party,” “whether any evidence has been irreparably  
7 lost,” and “the feasibility and fairness of alternative, less severe sanctions.” *Young v. Johnny*  
8 *Ribeiro Bldg., Inc.*, 106 Nev. 88, 93, 787 P.2d 777, 780 (1990). The facts in *Ribeiro* – involving  
9 the fabrication of evidence by the plaintiff to support his claim – demonstrate the level of  
10 misconduct and prejudice to the other party that warrants dismissal of a case as a discovery  
11 sanction under Nevada law. *Id.*

12           Defendants have asserted no misconduct or prejudice that meets this standard. Under  
13 the Court’s current scheduling order, the parties have ample time to complete discovery. If  
14 Defendants were truly concerned about time, they should not have waited 21 months to serve  
15 any discovery requests and delayed production of the Mortgage Documents for nine months.  
16 Because the bulk of the information Defendants have requested relates to the State’s  
17 contentions in the case, spoliation of evidence is not an issue. Furthermore, Defendants, unlike  
18 the State, have not been forced to waste time and money obtaining discovery that the State  
19 could have easily provided. Rather, the information Defendants seek has been extracted almost  
20 exclusively from their own documents.

21           Defendants have had the State’s lists of over 30,000 violations since December 16, 2013.  
22 However, they have provided the Court with no explanation of how much time they need to  
23 develop their evidence relating to those violations. Instead, they offer vague statements that  
24 they have been prevented from determining what experts they would need and from preparing  
25 dispositive motions and trial strategy. (See Decl. of Mark J. Connot, Ex. H to Defs.’ Br. at 3-4.)<sup>11</sup>

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26 <sup>11</sup> Defendants’ counsel has also attested that the State’s actions have prevented Defendants from taking NRCP  
27 30(b)(6) depositions and from contacting witnesses with discoverable information. Neither assertion is fair. As the  
28 State explained in its opposition to Defendants’ Motion to Compel, the majority of the NRCP 30(b)(6) deposition  
topics that Defendants noticed are improper, and the State intends to seek a protective order from the Court if  
Defendants determine that they wish to move forward. Defendants have not responded to the State’s objections to  
their 30(b)(6) deposition notices. (Ex. 4 at ¶6.) Furthermore, the State provided the list of witnesses it had  
contacted, with cross-references to where their contact information was disclosed in the State’s Initial Disclosures, in

1 Instead of arguing that they have suffered concrete discovery-related harms, which could be  
2 remedied with a discovery sanction, Defendants have made a broad argument for dismissal of  
3 the State's case that rehashes arguments already rejected by this Court repeatedly in this case  
4 and relies upon unfounded allegations about the State's criminal prosecution of former LSI Title  
5 Company employees that are wholly unrelated to the merits of this case. These broad  
6 allegations of harm are addressed in greater detail below. However, for purposes of the analysis  
7 under NRCP 37, Defendants have made no arguments of prejudice or harm that warrant the  
8 imposition of the sanction they seek – dismissal of the State's case. The State further contends  
9 that it has been cooperative and forthcoming, and no sanctions of any sort are merited.

10 **III. THE SUBSTANCE OF THE STATE'S DISCOVERY RESPONSES PROVIDES NO**  
11 **BASIS FOR SANCTIONS.**

12 **A. The State's Allegations Are Well-Supported by the Discovery Produced by**  
13 **the State.**

14 The State's allegations in its original Complaint, and in each amendment thereto, are well-  
15 founded in fact. In arguing that the State has no evidence to back up the Complaint, Defendants  
16 are continuing a tactic that they have been using since the start of the case: overstating or  
17 misstating the allegations of the Complaint and then knocking down the straw man they have  
18 created. In response to each of Defendants' three motions to dismiss, the State made clear and  
19 unequivocal statements about the nature of the case. The State has also provided clear  
20 descriptions of its claims in its written responses to discovery. An objective comparison between  
21 what the State has actually alleged and the evidence the State has obtained demonstrates that  
22 not only are the State's allegations proper, but that the State is already well on its way to proving  
23 several key elements of its claims.

24 Contrary to Defendants' arguments, the State has not alleged that mortgage documents  
25 executed by Defendants contained false information about the borrowers or loans. From the  
26 State's original Complaint, and through each amended Complaint, the State has clearly limited  
27 its allegations regarding Defendants' misrepresentations in mortgage documents to execution

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its original responses to Defendants' interrogatories on September 19, 2013. Defendants first advised the State of their difficulties contacting witnesses on November 26, 2013. (Ex. 4 at ¶5.)



1 and notarization issues.<sup>12</sup> Nor has the State alleged that homeowners were wrongfully  
2 foreclosed upon as a result of Defendants' actions. Rather, the State has alleged a generalized  
3 harm to Nevada and Nevada homeowners that resulted from the collective effect of Defendants'  
4 fraudulent and deceptive conduct – accelerating the pace of foreclosures and burdening the  
5 State's court system and county recorders with improperly executed documents, thus  
6 contributing to a housing crisis that caused significant damage to Nevada property values and to  
7 the economy as a whole. (State's Sur-Reply in Opp'n to Defs.' Mot. to Dismiss at 4 ("The State's  
8 Complaint alleges that Defendants' deceptive default mortgage servicing and document  
9 execution practices have harmed the economic well-being of Nevada residents and the State at-  
10 large.)) Harm to individual consumers is not an element of the State's claim, nor has the State  
11 alleged that any particular consumers were harmed. (*Id.* at 4-6.)<sup>13</sup>

12 The State has not alleged that every Defendant engaged in the conduct regarding control  
13 of and kickbacks paid by Network Firms. As the Third Amended Complaint clearly explains, and  
14 as the State has repeatedly assured Defendants, the Network Firm-related claims are  
15 specifically against Default Solutions and its corporate parents. (See Third Am. Compl. at ¶¶  
16 170-172. See *also* State's Revised Answers to DOCX's First Set of Interrogs., DEF Ex. J at  
17 000125; State's Revised Answers to Default Solutions's First Set of Interrogs., DEF Ex. M at  
18 000156; State's Revised Answers to LSI Title Co.'s First Set of Interrogs., DEF Ex. N at 000127  
19 (stating that the State does not seek to hold DOCX, Default Solutions, and LSI Title Company  
20 liable for one another's actions).)

21 The allegations that actually are contained in the Third Amended Complaint were properly  
22 made and are supported by the State's evidence. These allegations include:

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24 <sup>12</sup> Compl. at ¶ 79, 89; Am. Compl. at ¶ 79, 89, 106; Second Am. Compl. at ¶ 86, 96, 113; Third Am. Compl. ¶ 86, 97,  
25 116; State's Answers to DOCX's First Set of Interrogs. at 6; State's Revised Answers to DOCX's First Set of  
26 Interrogs. at 4-5; State's Opp'n to Defs.' Mot. to Dismiss at 3, 5 (May 10, 2012); State's Opp'n to Defs.' Mot. to  
Dismiss First Am. Compl. at 5 (Sept. 7, 2012); State's Opp'n to Defs.' Mot. to Dismiss Third Am. Compl. at 13 (June  
14, 2013).

27 <sup>13</sup> Indeed, the question of whether the State's case could rest on this generalized harm without allegations or proof  
of individual harm was briefed by the parties and argued before the Court on July 19, 2012 and resolved in the  
28 State's favor. The purpose of a *parens patriae* claim such as this one is to enforce the State's laws and to protect  
the State and its citizens against generalized harms like the ones at issue in this case, even where individual  
consumers may not have a claim for damages based on the same conduct. (See *also* State's Sur-Reply in Opp'n to  
Defs.' Mot. to Dismiss at 4-6.)

1           •       **Improper document execution at DOCX**, including mortgage documents signed  
2 with the names of Authorized Signers by other employees and mortgage documents notarized  
3 despite having been signed outside the presence of the notary. These allegations are supported  
4 by information provided by nine witnesses,<sup>14</sup> admissions provided by LPS, Inc. in this case (Ex.  
5 5), the non-prosecution agreement LPS, Inc. entered into with the United States Department of  
6 Justice (Ex. 6), mortgage documents executed at DOCX with multiple different signatures for the  
7 same Authorized Signer (Ex. 7, 8), Surrogate Signing forms signed by DOCX employees that  
8 purport to authorized the practice of employees signing the names of other employees to  
9 documents (Ex. 9);<sup>15</sup> and the convictions of former DOCX president Lorraine Brown in Missouri  
10 for forgery and making a false declaration, and in Florida for conspiracy to commit mail and wire  
11 fraud. (Ex. 10).

12           •       **Improper document execution at Default Solutions**, including the execution of  
13 affidavits by employees without personal knowledge of the facts contained therein and  
14 documents notarized despite having been executed outside the presence of the notary. These  
15 allegations are supported by information provided by seven witnesses,<sup>16</sup> and testimony of  
16 Default Solutions employees in *In re Wilson*, No. 07-11862 (Bankr. E.D. La. Aug. 21, 2008.)

17           •       **Improper document execution at LSI Title Company**, including foreclosure-  
18 related mortgage documents signed by one employee in the name of another employee and  
19 then notarized, documents notarized by employees who were not licensed notaries using the  
20 notary stamps of other employees or former employees, and documents notarized despite  
21 having been signed outside the presence of the notary. These allegations are supported by  
22 information provided by four witnesses<sup>17</sup>; over 18,000 mortgage documents identified as bearing  
23 the signatures of Gerri Sheppard or Gary Trafford and notarized in Nevada, where Defendants

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24 <sup>14</sup> Samantha Caselli (State's Revised Answers to LPS, Inc.'s First Set of Interrogs., DEF Ex. L at 000027-28);  
25 Christine Huang (*Id.* at 000054-55); Bailey Kirchner (*Id.* at 000061-63); Donte McCoy (*Id.* at 000073-74); Robert  
26 Norrbhoorn (*Id.* at 000075-76); Chris Pendley (*Id.* at 000077-79); Angelina Smith (*Id.* at 000090-94); Veronica  
27 Thomas (*Id.* at 000097-99); and Kelli Woolever (*Id.* at 000106-108).

28 <sup>15</sup> The State will file a Motion for Partial Summary Judgment on DOCX's violations of the DTPA, which will provide  
further detail regarding the basis for these allegations and LPS, Inc.'s admissions regarding this conduct.

<sup>16</sup> Leigh Gamble (State's Revised Answers to LPS, Inc.'s First Set of Interrogs., DEF Ex. L at 000037-39); Jeanelle  
Gray (*Id.* at 000043-46); Saretha Hopson (*Id.* at 000048-50); Amber Kirchner (*Id.* at 000060-61); Patricia  
McCormack (*Id.* at 000072-73); Choua Thao (*Id.* at 000096); and Rebecca Tviet (*Id.* at 000100-101).

<sup>17</sup> Meghan Shaw (State's Revised Answers to LPS, Inc.'s First Set of Interrogs., DEF Ex. L at 000087-90); Jennifer  
Bloecker (*Id.* at 000014-19); Debra Watkins (*Id.* at 000101-103); and Peter Horn (*Id.* at 000050-53).

1 have verified that Sheppard never travelled to Las Vegas, Nevada on company business and  
2 Trafford spent only four days in Las Vegas in 2005 and 2009 (Ex. 11, LSI Title Co.'s Resps. to  
3 State's First Set of Interrogs. at 5-6); and 51 mortgage documents identified that bear the notary  
4 stamp and purported signature of a person who was not employed by Defendants on the date of  
5 the notarization (Appendix B to State's Revised Answers to LSI Title Co.'s First Set of Interrogs.,  
6 DEF Ex. N at 001438 – 001443).

7 • **Improper control by Default Solutions of Network Firms.** These allegations are  
8 supported by information provided by fourteen witnesses.<sup>18</sup>

9 • **Default Solutions's improper practice of charging "admin fees," which**  
10 **amount to kickbacks, to Network Firms that are then passed along to consumers as**  
11 **attorney's fees.** These allegations are supported by information provided by a witness<sup>19</sup> and  
12 the Network Firm Agreements and accompanying fee schedules that provide for the "admin fees"  
13 to be charged (see State's Revised Answers to Default Solutions's First Set of Interrogs., DEF.  
14 Ex. M at 000125-153).

15 • **FIS and LPS, Inc.'s liability for the conduct of the subsidiary Defendants.**  
16 These allegations are supported by the fact that Default Solutions, DOCX, and LSI Title  
17 Company were wholly owned and controlled by FIS (until 2008) and LPS, Inc. (after 2008),  
18 pleadings and testimony in *Cornett v. Lender Processing Services, Inc.*, No. 3:12-cv-00233-  
19 UATC-MCR (M.D. Fla.) and *Moore v. Lender Processing Services, Inc.*, No. 3:12-cv-00205-  
20 UATC-MCR (M.D. Fla.), employment litigation in which LPS, Inc. took the position that former  
21 executives of LPS, Inc. had operational responsibility for the misconduct at the subsidiary  
22 Defendants, documents reflecting the involvement of LPS, Inc. employees in communications  
23 and relationships with clients of the subsidiary Defendants.<sup>20</sup>

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25 <sup>18</sup> Sylvester Annan (State's Revised Answers to LPS, Inc.'s First Set of Interrogs., DEF Ex. L at 000009-10);  
26 Marinda Bottoms (*Id.* at 000020-23); Carlos Branum (*Id.* at 000023-24); Frances Chowdhury (*Id.* at 000028-30);  
27 Marsha Cunningham (*Id.* at 000031-34); Kelly Evans (*Id.* at 000035-37); Nicole Gravatt (*Id.* at 000040-43); Jeanelle  
28 Gray (*Id.* at 000043-46); Allison Kier (*Id.* at 000058-60); Phil Leeber (*Id.* at 000067-68); Robert Raulerson, Jr. (*Id.* at  
000080); Rashad Roberson (*Id.* at 000081-82); Ilgin Sezer (*Id.* at 000084-86); and Katherine Zarbinski (*Id.* at  
000109-110).

<sup>19</sup> Adrian Lofton (State's Revised Answers to LPS, Inc.'s First Set of Interrogs., DEF Ex. L at 000070-71).

<sup>20</sup> See Appendix A to State's Revised Answers to LPS, Inc.'s First Set of Interrogs., DEF Ex. L at 000128 – 000172.  
The State will file a Motion for Partial Summary Judgment on the first two prongs of alter ego liability, which will  
provide further detail regarding the basis for these allegations.

1           The State’s allegations were well-founded at the time they were initially made, and the  
2 discovery conducted to date in this case has uncovered significant additional evidence  
3 supporting these allegations. Defendants cannot seriously dispute that the document execution  
4 conduct outlined in the Complaint occurred, given that they have issued press releases admitting  
5 to this conduct (*see supra* n.9), entered into numerous settlement agreements and a non-  
6 prosecution agreement, and terminated for cause executive-level employees for failing to  
7 prevent this conduct (*see, e.g.*, Ex. 12). Where the parties disagree – and the focus of this case  
8 – is on how many mortgage documents were improperly executed and whether the parent  
9 entities should be held liable for this conduct.

10           Similarly, LPS’s ability to control Network Firms and the payment of improper “admin  
11 fees,” or kickbacks, by Network Firms to LPS are endemic to the contractual relationship that  
12 existed between LPS and the Network Firms. Defendants do not dispute those contractual  
13 relationships or the terms of the contracts. Where the parties disagree is whether, in practice,  
14 LPS exercised an improper level of control over the Network Firms, whether the “admin fees”  
15 were deceptively represented to consumers, and whether these issues are actionable under the  
16 DTPA. The State’s allegations on these issues were properly made.

17           The Third Amended Complaint also contains some additional allegations that were made  
18 in good faith and with an appropriate factual basis, but that Defendants have concluded are  
19 unfounded based on the State’s discovery responses. For example, the State sought  
20 heightened penalties under NRS 598.0973 to the extent Defendants’ practices “*affected*  
21 consumers . . . over the age of 60 or persons with disabilities.” TAC, ¶ 194 (emphasis added).  
22 Defendants have construed this request as an accusation that Defendants were targeting elderly  
23 and disabled persons, but that simply is not supported by the language of the Complaint.  
24 Defendants asked the State to identify specific elderly or disabled persons against whom  
25 Defendants’ alleged conduct was directed. (*See, e.g.*, LPS, Inc.’s First Set of Interrogs. at 9-10.)  
26 The State cannot do so at this stage in discovery. The State’s request for heightened penalties  
27 was based on the State’s previous work on mortgage fraud – specifically, its generalized  
28 knowledge of lending practices that targeted persons with considerable equity in their homes,

1 who are often older. This generalized knowledge is a sufficient basis upon which to make a  
2 request for heightened penalties in a complaint. This allegation should not be considered  
3 insufficient simply because the State has not yet identified which of the tens of thousands of  
4 improperly executed mortgage documents relate to elderly or disabled homeowners.

5 Defendants also improperly construe certain of the State's responses to discovery  
6 requests, where the State had no responsive documents or information, as admissions that the  
7 State's allegations are not supported by evidence. (See Defs.' Br. at 15-16.) Defendants have  
8 propounded a number of discovery requests that misstate the State's allegations and then seek  
9 evidence supporting their misstated versions of these allegations. Defendants have also  
10 propounded a number of requests seeking documents that support particular allegations,  
11 ignoring the fact (sometimes stated on the face of the Complaint) that these allegations were  
12 based upon witness interviews rather than documents. Finally, Defendants propounded a  
13 number of requests seeking the identities of particular people or particular documents that fall  
14 within the allegations of the Complaint, and construed the State's inability to provide such lists at  
15 this stage of discovery as meaning the State has no evidence of the practices alleged at all.  
16 Specifically, Defendants draw the unfounded conclusion that the State lacks evidence to support  
17 its allegations based on nine requests to which the State had no responsive documents:

- 18 • RFP No. 17: "Produce all foreclosure related documents that You contend contain  
19 false information regarding the name of the borrower, the legal description of the  
20 property, or the fact of a default on the note or mortgage."

21 As explained above, the State has neither alleged nor is required to prove that the foreclosure-  
22 related mortgage documents at issue in this case contain false information. The State's  
23 allegations and claims focus on document execution and notarization.

- 24 • RFP No. 21: "To the extent that You allege that any of the Defendants engaged in  
25 a deceptive trade practice "directed" toward an elderly person or a person with a  
26 disability, produce all documents directed by any of the Defendants to such  
27 persons."

28 The State has not yet determined which of the mortgage documents it has identified as  
containing violations relate to elderly or disabled homeowners. As explained above, the State  
had a good faith basis for alleging that "[o]n information and belief, affected consumers included

1 consumers over the age of sixty or persons with disabilities.” (Third Am. Compl. at ¶¶ 194.)  
2 Discovery is ongoing, and the State will supplement its responses when it has information  
3 sufficient to determine which deceptively executed or notarized mortgage documents were  
4 directed to elderly or disabled homeowners.

- 5 • RFP No. 20: “Produce all documents reflecting all facts and circumstances  
6 supporting your contention that any of the Defendants intended to injure any  
competitor, or intended to substantially lessen competition.”

7 The Third Amended Complaint (¶¶ 193(e)) simply invokes NRS 598.0953(1), which makes  
8 evidence that someone has engaged in a deceptive practice “prima facie evidence of intent to  
9 injure competitors and to destroy or substantially lessen competition.” The State has not alleged  
10 – and under this legal presumption, will not be required to allege or prove – any facts directly  
11 demonstrating anti-competitive conduct.

- 12 • RFP No. 5: “Produce all documents produced, provided, or made available to You  
13 by any Trustee relating to the Attorney General’s Allegations against any of the  
Defendants.”

14 The State has made no allegations that depend upon the existence of such evidence. The  
15 State’s allegations regarding Network Firms are based on documents produced by Defendants  
16 and information provided by witnesses.

- 17 • RFP No. 6: “Produce all documents produced, provided, or made available to You  
18 by any attorney or law firm relating to the Attorney General’s Allegations against  
19 any of the Defendants.”

20 Likewise, the State has made no allegations that depend upon the existence of such evidence.  
21 The State’s allegations regarding Network Firms are based on documents produced by  
22 Defendants and information provided by witnesses.

- 23 • RFP No. 8: “Produce all handwriting and signature exemplars taken by You from  
24 any employee or former employee of any of the Defendants, and all documents  
25 that reflect the date the exemplar was taken, and the results of any scientific  
26 comparisons of the signatures to any document upon which the Attorney General  
relies for the allegations in the Third Amended Complaint against any of the  
27 Defendants.”

28 The State has not collected such evidence to date, nor has it made any allegations that depend  
upon such evidence. If and when the State collects such evidence, it will supplement its

1 responses and provide it.

- 2 • RFP No. 13: “Produce the “LPS policies and procedures” referred to in paragraph  
3 38 of the Third Amended Complaint.”

4 The State made the allegations in paragraph 38 of the Third Amended Complaint based on  
5 information provided by a witness.<sup>21</sup>

- 6 • RFP No. 26: “Produce each of the ‘pleadings, proofs of claim, motions for relief  
7 from stay, and notices of default’ that Confidential Witness #6 allegedly ‘instructed  
8 Network Firms on how to prepare’ and each of the ‘proofs of claim, motions for  
9 relief, assignments, and other legal documents’ that Confidential Witness #6  
10 allegedly ‘reviewed and evaluated’ for Network Firms, as alleged in paragraph 161  
11 of the Third Amended Complaint.”

12 As the allegation clearly states, the State obtained this information from a witness, who  
13 described her responsibilities and practices when working at Default Solutions, not specific  
14 documents that she reviewed or on which she instructed Network Firms.

- 15 • RFP No. 29: “Produce all documents reflecting the specific facts of each instance  
16 in which you allege that any of the Defendants obstructed communications  
17 between any foreclosure firm and any servicer-client.”

18 Again, the State’s allegations were based not on documents, but on the information provided by  
19 witnesses, who described the role of Default Solutions as standing between the servicer-clients  
20 and foreclosure firms, and who told the State that they had been instructed not to permit  
21 foreclosure firms to communicate directly with servicer-clients.<sup>22</sup>

22 Defendants argue that each of these RFPs is “clearly and cleanly tied to the allegations  
23 the Attorney General made.” (Defs.’ Br. at 16.) However, in each of these examples, Defendants  
24 follow a common pattern – using misstatements and selective omissions of the language in the  
25 Complaint, and the State’s discovery responses, to create the impression that the State’s  
26 allegations have no basis in fact.<sup>23</sup> These arguments are a distraction from the critical facts in

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27 <sup>21</sup> Jeanelle Gray, former Document Execution Manager (See State’s Revised Answers to LPS, Inc.’s First Set of  
28 Interrogs., DEF Ex. L at 000043-46).

<sup>22</sup> Marinda Bottoms (State’s Revised Answers to LPS, Inc.’s First Set of Interrogs., DEF Ex. L at 000020-23); Carlos  
Branum (*Id.* at 000023-24); Kelly Evans (*Id.* at 000035-37); and Nicole Gravatt (*Id.* at 000040-43).

<sup>23</sup> Defendants’ practice of misrepresentation by omission, in some cases, goes even further. For example, on page  
19 of their brief, Defendants state: “While the Complaint quotes [Confidential Witness #5] as stating that he chose to  
leave his employment at Lender Processing because ‘I prefer to be unemployed than to compromise my  
professional integrity’ (TAC ¶149), the summaries provided in Response to Interrogatory No. 7 state: ‘He left  
because the environment didn’t pique his curiosity as an attorney.’” Defendants attempt to create the impression  
that the State has made an allegation in the Complaint that has no basis in the witness interview to which it is

1 this case. As outlined above, the State has meaningful and extensive evidence of the DTPA  
2 violations that it alleged in each of the complaints filed in this case. Defendants' arguments to  
3 the contrary are specious and form no legitimate basis for the imposition of sanctions against the  
4 State.

5 **B. Defendants' Speculative Allegations of Harm and Prejudice, Even if Valid,**  
6 **Cannot Be Ascribed to the State**

7 The harm and prejudice that Defendants assert – a one-time drop in stock price, harm to  
8 employee morale, and bad publicity for the company – are not the result of the State's lawsuit.  
9 They also have no connection to the timing of the State's discovery responses. Rather, these  
10 consequences are the natural and foreseeable result of the deceptive conduct in which  
11 Defendants engaged. Defendants have cast themselves as blameless, and the State's  
12 investigation of their conduct as unfair and unwarranted. This could not be further from the truth.

13 To begin, Defendants, and their employees, have admitted deceptive document execution  
14 and notarization practices in numerous settlements with federal and state law enforcement<sup>24</sup>  
15 and press releases.<sup>25</sup>

16 Even if Defendants had not admitted this conduct, Nevada's lawsuit was not the beginning  
17 of bad publicity for Defendants. Defendants' improper document execution practices were the  
18 subject of an expose on the television news program 60 Minutes in April 2011<sup>26</sup> and announced  
19 as the subject of formal enforcement action by federal banking regulators the same month.<sup>27</sup>  
20 The State of Nevada's investigation into these practices was one of many, and the collective  
21 impact of these investigations on the company cannot be attributed to Nevada alone. Indeed,  
22 the State conducted its investigation of LPS confidentially from October 2010 through December  
23 15, 2011. The State's investigation only became public when the Defendants refused to enter  
24

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25 attributed. However, they omit the important fact that this witness said *both* things in his interview, and both were  
26 included in the State's response to Interrogatory No. 7.

27 <sup>24</sup> See, e.g., Ex. 13 (OCC Consent Order); Ex. 14 (Washington settlement agreement with LPS, Inc. dated Jan.  
28 2013); Ex. 6 (Federal Non-prosecution Agreement); Ex. 10 (Lorraine Brown Plea Agreement).

<sup>25</sup> See supra n.9.

<sup>26</sup> Available at <http://www.cbsnews.com/videos/the-next-housing-shock/> (last accessed Jan. 23, 2014).

<sup>27</sup> *OCC Takes Enforcement Action Against Eight Servicers for Unsafe and Unsound Foreclosure Practices*, OCC  
(Apr. 13, 2011), <http://www.occ.gov/news-issuances/news-releases/2011/nr-occ-2011-47.html> (last visited Jan. 23,  
2014).



1 into a tolling agreement, forcing the State to file its Complaint in December 2011. Since then,  
2 Defendants have entered into settlement agreements with every state other than Nevada, with  
3 the federal banking regulators, and with the Department of Justice, requiring them to pay,  
4 collectively, over a hundred million dollars to these entities.

5 Defendants also argue that they face significant expenses associated with maintaining a  
6 database of documents for purposes of this litigation. In reality, however, this database was not  
7 created specifically for the Nevada investigation and litigation; it was created in early 2010, and a  
8 large volume of the documents it contains have nothing to do with the State of Nevada. (Ex. 4 at  
9 ¶ 2.) Furthermore, the State believes that Defendants may be required to maintain that  
10 document database pursuant to their settlement agreements with other enforcement authorities.  
11 (See, e.g., Ex. 14 at 17 (“LPS agrees to retain documents and other information reasonably  
12 sufficient to establish compliance with the provisions of this Judgment”).) Thus, for Sheryl  
13 Newman, General Counsel of LPS, Inc., to attest that the cost of maintaining this database is  
14 “associated with this case” is particularly disingenuous.

15 Ultimately, the crux of the Defendants’ argument is that the State’s unwillingness to settle  
16 this case on the terms offered by Defendants to date has “prevented Defendants from being able  
17 to completely close this chapter of their company histories, which Defendants have aggressively  
18 sought to redress.” (Defs.’ Br. at 28.) Contrary to what Defendants argue, they are not entitled  
19 to settle this case – or any case. The State has made legitimate, well-founded allegations  
20 against Defendants, and it is entitled to continue the process of conducting discovery and  
21 litigating its case.

22 Defendants’ argument that they have been prejudiced in preparing for trial is equally  
23 without merit. Any difficulty that Defendants face in preparing for trial is the fault of their own  
24 delays. Defendants waited until the case had been pending 21 months to serve discovery.  
25 Defendants also waited a year to raise any issues with the State’s Rule 16.1 disclosures. (Ex. 4  
26 at ¶3.) Additionally, Defendants are continuing to supplement their responses to the State’s first  
27 discovery requests, with the most recent production of documents served on January 21, 2014.  
28 Defendants are also still supplementing their privilege log of documents responsive to the State’s

1 First Set of Requests for Production. Defendants have not yet finished their own privilege log or  
2 production of documents related to their remediation efforts and these documents are a critical  
3 component of what the State must review and analyze to be able to respond fully to Defendants'  
4 requests, including a number of contention interrogatories. Given their own unwillingness to  
5 participate in the discovery process, Defendants cannot now argue that the State's actions have  
6 prejudiced them in their ability to conduct discovery and prepare for trial. Accordingly, sanctions  
7 on this basis are unwarranted.

## 8 **V. CONCLUSION**

9 Defendants' arguments in favor of sanctions are baseless and should be rejected by this  
10 Court. The State is attempting to conduct discovery in this case in an orderly and efficient  
11 fashion. The State raised good faith objections to some of Defendants' requests, and when  
12 those objections were overruled by the Court, the State was forthcoming and complete in its  
13 revised responses to Defendants' discovery requests that sought its evidence in the case. The  
14 State's production of responsive documents and a privilege log were substantially complete on  
15 December 16, 2013. Although the State has complied – and will continue to comply – with its  
16 ongoing obligation to produce and log additional responsive documents it identifies as the case  
17 goes forward, the State believes that its searches for and review of potentially responsive  
18 materials are substantially complete at this time. The State worked rapidly to search through  
19 nearly 600,000 mortgage documents and closely review over 80,000 mortgage documents to  
20 catalog the Defendants' violations of the DTPA in response to their interrogatory requests. More  
21 than 30,000 such violations were identified by December 16, 2013, and the remainder were  
22 identified by January 24, 2014.

23 At the hearing on December 17, 2013, Defendants represented to this Court that the  
24 State's revised discovery responses contained "significant deficiencies." It is clear from  
25 Defendants' brief on sanctions that the deficiencies they see reflect disagreements with the State  
26 over what evidence is sufficient to establish violations of the DTPA. Defendants have raised  
27 arguments more commonly found in a Rule 11 motion or a motion to dismiss. As outlined  
28 herein, these arguments are baseless.

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The State’s discovery responses contain no deficiencies that warrant any sanctions, much less dismissal of the complaint. Substantial evidence – including Defendants’ own admissions in this case and in other related proceedings – supports the State’s allegations of fraudulent and deceptive conduct. The State should be permitted to continue conducting discovery and building its evidence in the case, in accordance with the schedule that the Court has set forth. Accordingly, the State respectfully requests that Defendants’ request for dismissal of the Complaint or any other sanction be denied.

DATED this 24<sup>th</sup> day of January, 2014.

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