

# EXHIBIT K

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**IN THE MATTER OF  
RESIDENTIAL MORTGAGE  
FORECLOSURE PLEADING AND  
DOCUMENT IRREGULARITIES**

SUPERIOR COURT OF NEW JERSEY  
CHANCERY DIVISION  
GENERAL EQUITY PART  
MERCER COUNTY

DOCKET NO. F-059553-10

Civil Action

**CERTIFICATION OF  
ADRIAN G. LOFTON**

I, Adrian G. Lofton, of full age, do hereby certify as follows:

1. I make this certification based on my personal knowledge.
2. I am an adult citizen of the United States and have resided in Duval County, Florida since 1999.
3. I received an associate's degree in business administration from Keiser University in 1997.
4. I continued my education at Nova Southeastern University, but left school in 1999, 12 credit hours short of bachelor's degree.
5. I moved to Jacksonville, FL in 1999 to help my grandmother when my grandfather became sick.

6. I worked in the mortgage default servicing industry for over six years starting in September 2001.
7. Mortgage default servicing is a specialty business area that provides services to banks servicing mortgage loans that have gone into default.
8. When a mortgage loan goes into default, banks outsource their default servicing operations to a business specializing in the area of mortgage default servicing.
9. A mortgage loan is considered to be in default when a borrower's records reflect the borrower has failed to make periodic payments required by the loan documents.
10. The life cycle of servicing a default loan commences with the default determination.
11. The life cycle of servicing a default loan ends with a sheriff's sale or some other event resulting in the real estate being owned by the bank or an investor, a status known in the industry as REO for "real estate owned."
12. Typically in the mortgage default servicing industry when a borrower's mortgage loan is more than 90 days in default, the loan is turned over to a default mortgage-servicing provider.
13. I started working in the mortgage default servicing industry in September 2001 as an employee of the Law Office of Gerald Shapiro ("LOGS") in Jacksonville, FL.
14. LOGS had mortgage servicing operations all over the country.
15. When I started at LOGS, I understood that it had the lion's share of default mortgage servicing nationwide.
16. Referrals from bank mortgage servicers came to LOGS on the 91<sup>st</sup> day of default for foreclosure default servicing.
17. The Jacksonville LOGS office had approximately 150 employees.

18. There were approximately 10 different subject-matter areas within the LOGS Jacksonville operation.
19. LOGS hired me as an intake specialist handling default mortgage foreclosure matters referred by Washington Mutual Bank & Everbank, two banks for who LOGS provided default mortgage processing services.
20. As a LOGS intake specialist I reviewed incoming foreclosure files and sent the matters out to LOGS network referral attorneys.
21. LOGS maintained a network of foreclosure attorneys in every state.
22. The LOGS foreclosure-servicing operation was computerized with internet links to the banks that turned over default mortgage servicing to LOGS and internet links to the LOGS network attorney law firms.
23. The basic computer platform used by the banks' mortgage servicing operations is called Mortgage Servicing Package ("MSP").
24. MSP is a computer program developed in the early 1960s.
25. In 1990, a company named Alltel Information Services purchased the company that owned MSP.
26. In 2002, Fidelity National Finance purchased the financial services division of Alltel Information Services, renamed the purchased business Fidelity Information Services, and moved the company headquarters to Jacksonville, FL.
27. Fidelity licenses the MSP program to banks and other businesses in the finance industry.
28. MSP is available as a platform for use by any bank mortgage servicing operation.

29. In my six-years experience in the default mortgage servicing industry, each bank mortgage servicing operation used MSP for entering, processing and storing customer account data.
30. Bank mortgage-servicing operations also use a suite of web-based default management tools to communicate messages, images and invoices with other businesses to whom the banks outsourced default mortgage servicing.
31. The banks' mortgage servicing operations transmitted foreclosure loan file data to default mortgage service providers over the internet using web-based applications.
32. As part of a default mortgage-servicing contract between the banks and LOGS, designated LOGS employees had access by way of an internet link to the bank's computer systems and records for individual mortgage loans.
33. As a LOGS employee, I was authorized by the banks to enter the banks' computerized records regarding individual loans referred by the banks to LOGS for mortgage default servicing.
34. The LOGS employees' access to the borrower information on the banks' computer systems was controlled by security protocols.
35. The security protocol included the assignment of unique user names and passwords to LOGS employees with specific access authorization to the banks' computerized customer records.
36. As a LOGS employee, I was assigned a unique user name and password to access each banks' computerized customer records over an internet link using Lenstar.
37. The unique computer user name and password assigned to me gave me access to the entire bank's mortgage loan portfolio, including loans that were not in default as well

as other loans in default that had not been assigned to me as part of the LOGS intake process.

38. While assigned to foreclosure referral duties at LOGS, I could access banks' customer records on the banks' computer system to confirm data contained in the referral transmission.
39. I worked in the LOGS foreclosure referral department from 2001 to 2003.
40. From the foreclosure referral department, I moved to the LOGS bankruptcy department in 2003.
41. The LOGS bankruptcy operation was broken down into five different subject matter areas.
42. While working in the LOGS bankruptcy department, I worked on preparing proofs of claims for use in bankruptcy court proceedings.
43. In the bankruptcy department, my work required me to access bank loan customers' files in the bank's computer records stored on MSP at the bank.
44. I kept the user names and passwords I already had for banks I already did work for, but I had different access to account data in bankruptcy.
45. I also received new user names and passwords for additional banks on whose loans I did work.
46. I was authorized in accordance with the banks' security protocols to make changes in the individual bank customer mortgage loan records.
47. The unique computer user name and password for each bank servicer gave me access to bank's customer loan files for loans that were in default as well as for loans that were not in default.

48. For example if bank's mortgage loan portfolio had 2 million mortgage files, I could access the customer data for the entire 2 million mortgage loan files.
49. For loans that were in default, I could access the bank's computerized customer records to change customer account data in the banks' computer records for the purpose of reconciling the computerized data with other records.
50. The customer account data I could change included payment and disbursement data.
51. For loans that were not in default, I could access the bank's computerized customer records to change customer account data in the banks' computer records for the purpose of reconciling the non-defaulting customer's computerized data with other records, including the defaulting customer's records whose loan was assigned to me.
52. For example, typically if a customer in default claimed a payment for expenses had been made and misapplied, I could investigate the claim.
53. If the investigation substantiated the claim, I could correct the prior error.
54. To correct the prior error, I could "move" funds from one subaccount to another subaccount, e.g., from payment accounts reflecting payment of principal, interest, taxes, insurance, and escrow amounts to a suspense account.
55. 24 hours later I could then "move" funds from the suspense account to a corporate expense account and credit the amount of the claimed payment for a corporate expense.
56. If the investigation showed that the defaulting customer's payment had been misapplied by the bank to another non-defaulting customer's account, I could go into the other customer's account and "move" monies to show the correct account had been credited with the payment.

57. I and other LOGS employees had the ability to reverse transactions previously made by going into the bank's customer account records and "moving" funds from a payment account to a suspense account and then "move" the funds to a corporate expense account.
58. While I was working at LOGS, the mortgage-servicing contract with Washington Mutual Bank came to an end.
59. In 2004, an insurance company named First American purchased LOGS and started laying off employees.
60. First American was a Fidelity competitor.
61. The successor First American business, known as FANDO, continued to use Lenstar as the internet application for communicating among banks and network law firms.
62. I was laid off from LOGS in summer of 2004.
63. When I left LOGS in 2004, I was a senior bankruptcy associate handling contested cases.
64. In the summer of 2004, I started working for Option One Mortgage Company as a bankruptcy specialist where I handled all subject-matter areas of bankruptcy, including mortgages in foreclosure.
65. Around the end of 2005, I left Option One Mortgage Company and went to work for ABN AMRO Mortgage assigned to hurricane insurance claims involving properties in default.
66. I left ABN AMRO Mortgage until April 2006.
67. In April 2006 I got work through a temporary employment agency with Fidelity National Information Services (FIS).



68. From April 2006 to October 2007 I was employed by at an FIS subsidiary called Fidelity National Foreclosure Solutions, Inc., which was a division of Fidelity National Default Solutions in Jacksonville, Florida.
69. I understood then and still understand that Fidelity National Financial (FNF) company is the parent company of FIS.
70. By August 2007, the FIS business was using the name FIS LPS Technology Solution.
71. After I was no longer employed, in 2008 the business became Lender Processing Services, Inc.
72. For purposes of this certification, I refer to my employer as Fidelity.
73. Fidelity was then and is now a competitor of my former employer LOGS.
74. Fidelity had two servicing sites for the entire United States, one in Jacksonville, FL and Minnesota.
75. Fidelity had network attorneys in every state.
76. As was the case with LOGS, Fidelity's default mortgage servicing operation was computerized.
77. I had the opportunity to learn first hand a number of different operational functions from job "shadowing."
78. Fidelity's intake program for foreclosure referrals from bank servicing operations was NewTrak.
79. When I first started working as a temporary employment agency employee assigned to Fidelity, I was reviewing foreclosure files that Everbank was submitting to Fidelity to be loaded to the Fidelity system called NewTrak.

80. NewTrak is an internet software program used for communicating with Fidelity network attorneys and bank mortgage servicing operations.
81. I worked as a Fidelity Associate at the Everbank facility for 3 months.
82. At end of 3 months in approximately July 2006, I became a full time Fidelity associate and moved to the corporate office at 515 Riverside Ave. in Jacksonville, FL where I remained until I was terminated in October 2007.
83. Corporate headquarters had approximately 600 associates plus supervisors, managers, assistant vice presidents, vice presidents and the president.
84. Fidelity's headquarters operation had a number of departments including foreclosure, bankruptcy, reinstatement, loss mitigation, claims, attorney management and document execution.
85. Each Department included an Assistant Vice President, a Team Manager, one or more Team Supervisors, one or more Team Leaders and the Team Associates.
86. Each Team had about 8 to 10 Associates.
87. Individual teams had a designated subject matter responsibility.
88. All of the Team Associates, Team Leaders, Team Managers, Supervisors and Vice Presidents had usernames and passwords to the Bank Servicers' MSP systems and to NewTrak.
89. As a full time associate at corporate headquarters, I worked with a team within the Foreclosure Department responsible for reinstatements, payoffs and judgment figures until approximately January 2007.
90. In January 2007, I moved to the Breakdowns Team within the Foreclosure Department.

91. As a breakdown team associate, I had a broad responsibility to provide breakdowns of corporate foreclosure expenses to law firms.
92. This job required pulling all of the information about the borrower's loan history as the loan passed through multiple hands over time
93. I remained a breakdown associate until I was terminated.
94. Fidelity team associates' access to the bank servicers' computer records was similar to the access to bank customer records available to me when I worked at LOGS.
95. Access was permitted through use of assigned user names and passwords and governed by security protocols that prohibited others from using user names and passwords that were not assigned to them.
96. The bank servicers for whom Fidelity provided default services and for whom Fidelity team associates and supervisory personnel had access to the bank servicers' computer systems were:
  - Option One
  - Bank of America
  - Countrywide
  - Washington Mutual
  - Wachovia
  - Key Bank
  - HomeEq (Wachovia now Barclays)
  - EMC
  - Wells Fargo
  - America's Servicing Company (Wells Fargo)
  - Saxon
  - HSBC

97. Fidelity's Employee Handbook provided:

"Use of Company's Technical Resources: Employees should never access any technical resources using another employee's password. Employees should only access the libraries, files, data, programs and directories that are related to your work duties. Unauthorized

review, duplication, dissemination, removal, installation, damage or alteration of files, passwords, computer systems or programs, or other property of the Company, or improper use of information obtained by unauthorized means, is prohibited.” (p. 51.)

98. I could go into each bank servicer’s computer system and view individual borrower records using login credentials provided to me.
99. Each bank’s login credentials consisted of a user ID and password.
100. To get these credentials I had to be vetted with a background check.
101. With the computer credentials I could access the bank’s computer records for servicing mortgage loans.
102. I could go into each bank servicer’s computer system and view individual borrower records.
103. As was the situation when I worked for LOGS, I could access accounts and “move” funds around.
104. The banks’ computer system included screens for suspense funds that I could access and “move” money around various subaccounts.
105. Fidelity team associates received bonuses based on speed in resolving issues.
106. The bonus system placed a premium on resolving issues without raising them with supervisory personnel.
107. If a team Associate could not resolve a problem, the associate would go up the chain of command to the Team Leader, then to the Team Supervisor, then to the Team Manager and then to the Assistant Vice President.
108. Team Associates were graded, ranked and paid bonuses based on the number of disputes or issues they could resolve without going “up the line” and based on how fast they could resolve the matter.

109. Towards the end of my employment at Fidelity, my biggest concern was that most of the Associate Team members had gained unauthorized access to the logins and passwords of their team associates and supervisors for all of the bank servicers' computers.
110. With this unauthorized access to the Bank's computers, the Fidelity associates could go into the banks computer files and manipulate the data.
111. Such manipulation of the bank customer data could include changing entries, reversing transactions, adding transactions and moving funds in and out of suspense accounts.
112. I was particularly concerned that during "crunch" times when a great volume of work came in during a short time and we were understaffed, Team Associates were cutting corners.
113. There were times when a lot of work would come in at one time and there were pressures to get the work done quickly.
114. Supervisors would tell the Team Associates to do whatever was needed to get the job done.
115. In my experience, the system encouraged Team Associates to cut corners.
116. When an employee cut corners, the employee left out one or more steps that should have been performed and had to make something up.
117. The problem caused by cutting corners might not come to light until six months down the road when an attorney asks questions about the billing record.
118. One reason I believe I was terminated is because I complained to the Assistant Vice President about Team Associates having improperly gotten their supervisors' and other associates usernames and passwords to the banks computer systems

119. I complained that Team Associates were misusing other employees' passwords and user names to gain unauthorized access to the banks' computer systems and to make changes to the customer account records by adding data, cancelling out prior entries, and reversing payments.
120. I went through the chain of command with my concerns.
121. On August 22, 2007 I received a notice sent to all FNFS employees from James M. Dorian, Assistant Vice President of Security and Compliance, FIS LPS Technology Solutions.
122. Dorian's notice in bold letters advised: "**Username and password information should NEVER be shared between users.**"
123. I immediately picked up the phone and called Mr. Dorian.
124. I spoke with Mr. Dorian about my concerns over breach of computer security regarding misuse of passwords.
125. I told Mr. Dorian that Team Associates were being forced by the pressure to produce results quickly that they disregarded not only Fidelity's computer security rules, but also the rules of each mortgage bank servicer.
126. I told Mr. Dorian that Team Associates were using Fidelity team managers' user name and passwords to access bank servicer computers and to make unauthorized changes on MSP accounts.
127. I told Mr. Dorian that these breaches of computer security were widespread.
128. On August 24, 2007, I was verbally reprimanded by my team lead and supervisor for reporting these breaches.
129. I was terminated on October 14, 2007.

130. In November 2007, I filed a civil case against Fidelity for wrongful discharge based on my complaints about breaches of computer security involving unauthorized use of bank servicer passwords and access to bank servicer customer records.
131. I lost my case in a summary judgment motion in October 2009 in which I represented myself.
132. In the course of pursuing my case, from mid- 2008 through mid-2009, I personally deposed twelve Fidelity employees as witnesses.
133. These 12 witnesses included Mr. Dorian who was the Assistant Vice President of Security and Compliance and his boss Vice President Bill Newland.
134. Based on the sworn testimony of the 12 witnesses, I learned that nothing had changed regarding the practices that prompted my raising questions about the lack of integrity in the company's computer systems.
135. Not one witness said anything had been done to tighten up computer security.
136. Not one witness I deposed said anything had been done to address the computer security breaches I brought to management's attention.
137. As was the case with the Team Associates, network law firms were also subjected to pressures to get things done quickly.
138. The network law firms were rated on how fast they got things done.
139. The network law firms were given "APR," or Attorney Performance Ratings.
140. Fidelity maintained a master matrix for each Fidelity network law firm that included graphs on how fast or slow each firm performed certain functions in bankruptcy and foreclosure.
141. Every network attorney firm has to have NewTrak.

142. Every attorney activity is monitored in NewTrak.
143. All processes are tracked in NewTrak from opening the file, to ordering title work and preparing mortgage assignments.
144. A task is opened when a matter is referred to the attorney and it is closed when the task is responded to.
145. Many times the Fidelity associates would pick network firm A for a bankruptcy because they were the fastest with a bankruptcy APO (Adequate Protection Order) and then they would pick network firm B in the same city for a foreclosure matter because they were faster with foreclosure matters.
146. Fidelity ranked the network attorneys every 3 months based on how fast they got things done and Fidelity paid them bonus money based on the APR ratings.
147. The network law firms were ranked like the Top 25 College basketball teams and the number 1 bankruptcy and foreclosure firms received the most bonus money.
148. As for the APR ratings, each time a network law firm had to contact Fidelity about something Fidelity personnel thought the attorney should have resolved, it could bring down their APR rating.
149. The network attorneys got hit with “negative points” for such contacts.
150. Fidelity had “Green Firms” and “Red Firms” in their firm matrix systems.
151. A “Green Firm” was the type of network firm that would do whatever it takes to get the job done on time and in time.
152. Green Firms were more concerned about earning bonus money than addressing ethical issues.



153. The Green Firms knew every task was being timed on NewTrak and the green firms were players who would do what Fidelity wanted done.
154. In contrast, the “Red Firms” were firms that would raise ethical issues from time-to-time about how they were doing or not doing things and these firms were to be avoided if possible.
155. Fidelity associates made decisions as to which firm would get new work.
156. Red firms “slowed the system down.”
157. The Fidelity attorney management team consisted of Fidelity associates and supervisors, but no attorneys.
158. The Fidelity attorney management team handled problems network attorneys had with files and could help resolve issues law firms had with their files.
159. Fidelity network attorneys would fly to meetings in Jacksonville, FL to meet with the Fidelity attorney management team to discuss cases and judges.
160. I recall a firm named Federman Phelan from Philadelphia that visited the Jacksonville office 2 or 3 times a year during 2006 and 2007.
161. It was usually a group of about 5 people, including 3 attorneys and paralegals.
162. Most times the Federman Phelan law firm took the entire Fidelity attorney management team to lunch or dinner at an expensive restaurant.
163. The restaurant of choice for the Federman Phelan attorneys was Ruth Chris Restaurant in Jacksonville, FL.
164. I attended one of these dinners hosted by Federman Phelan at the downtown-Jacksonville Ruth Chris Restaurant.

165. As part of my job training, I shadowed one of the Federman Phelan meetings with the Fidelity attorney management team.

I hereby certify that the foregoing statements made by me are true and I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated: March 24, 2011

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Adrian G. Lofton