UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

CITY OF ST. CLAIR SHORES GENERAL EMPLOYEES' RETIREMENT SYSTEM, Individually and on Behalf of All Others Similarly Situated,	)	
Plaintiff,	)	Case No. 3:10-cv-01073-TJC-JBT
vs.	)	Honorable Timothy J. Corrigan
LENDER PROCESSING SERVICES, INC., *et al.*	)	
Defendants.	)	

DEFENDANTS' REPLY MEMORANDUM OF LEGAL AUTHORITY IN FURTHER SUPPORT OF THEIR MOTION TO DISMISS

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INTRODUCTION

Despite its length, the Amended Class Action Complaint (the "Complaint") is not complicated. Plaintiffs allege that all of Lender Processing Services' ("LPS" or the "Company") revenues and other financial metrics from 2008 to 2010 were "artificially inflated" by the Company's foreclosure documentation practices and receipt of administrative fees from attorneys. Moreover, Plaintiffs allege that LPS misled investors when it told them that its attorney network was "independent" and failed to fully disclose its business problems prior to the end of the Class Period.

In their Opening Memorandum, however, Defendants demonstrated that Plaintiffs' theory of fraud lacks any factual support demonstrating falsity, scienter, or loss causation. In particular, Plaintiffs have not adequately alleged that any of LPS' financial results were actually misstated. Moreover, the Complaint and its attached documents affirmatively demonstrate that LPS did *not* control the network attorneys and Plaintiffs offer no factual allegations suggesting that LPS failed to accurately disclose what it knew about the foreclosure documentation issues. As for scienter, this case is on all fours with the Eleventh Circuit's *Mizzaro* decision, which affirmed the dismissal of a similar complaint. Finally, none of the "disclosures" about LPS that led to stock price declines actually provided the market with any "new" news about the alleged improper business practices, completely undermining the existence of loss causation.

Plaintiffs have no effective response to these fatal pleading deficiencies. Instead, Plaintiffs use their Opposition to substantially and impermissibly rewrite their Complaint. Plaintiffs now assert that the foreclosure documentation issues and attorney administrative fees were part of an improper business model that was used to cross-sell LPS' default services to existing clients. Plaintiffs claim that, as a result, Defendants misled investors because they failed to inform them that this improper business model was the real source of the Company's entire default services revenue.

Plaintiffs' new theory is just as factually deficient as their old theory. Plaintiffs point to no documents or confidential witness statements that offer even a shred of support for the existence of this "improper business model." Moreover, the entire idea is belied by LPS' actual financial performance following the Class Period, which continues to include significant revenues from its default services business.

Plaintiffs' attempt to use their new fraud theory to correct all of their pleading deficiencies is equally unavailing. According to Plaintiffs, every statement that LPS made about its revenues was false because it did not disclose the "real source" of LPS' default services revenues. Similarly, Plaintiffs claim that Defendants must have known about the improper business practices because they supposedly accounted for all of LPS' default services revenues. And, inevitably, Plaintiffs assert that they have adequately pled loss causation because investors were never fully informed about the scheme. All of these arguments fail for the same reason: Plaintiffs' new fraud theory is pure invention. The Court should dismiss the Complaint with prejudice.

ARGUMENT

I. Plaintiffs' Attempt to Rewrite Their Complaint is Improper and Without Any Factual Support

The gravamen of the Complaint is that LPS had foreclosure documentation problems and engaged in illegal attorney fee-splitting, thereby "artificially inflat[ing]" LPS' reported financial results during the Class Period. Compl. ¶ 131(h). As set forth in Defendants' Opening Memorandum, this claim is specious. Open. Mem. at 16-18. First, Plaintiffs do not allege that LPS' reported revenues and profits were inaccurate. Open. Mem. at 16. Second, LPS met its financial guidance in 2010, even after disclosing its foreclosure documentation problems. Open. Mem. at 17. Finally, the revenues associated with the foreclosure documentation issues and the attorney network were not *material* to LPS' financial results, constituting *less than 6%* of LPS' overall revenues (even assuming that *all* of the revenues associated with DocX and the attorney network could be attributed to improper business practices). Open. Mem. at 18.

Instead of addressing these pleading deficiencies, Plaintiffs have decided to impermissibly rewrite the Complaint in their Opposition. Plaintiffs first point to an LPS prospectus and annual Form 10-K filing (cited in the Complaint for completely different propositions) for the unremarkable proposition that the Company seeks to "cross-sell" its services to existing clients. Opp. at 5. Plaintiffs proceed to discuss LPS' attorney network and assert, without factual foundation (*see* Open. Mem. at 18-21), that LPS provided free foreclosure services to its clients "through illegal kick-backs and referral fees from attorneys in LPS's network." Opp. at 6. At this point, however, Plaintiffs veer off into an entirely new theory of fraud found nowhere in their Complaint. Instead of the improper business practices leading directly to "artificially inflated" revenues as originally pled, Plaintiffs now assert that Defendants used the free foreclosure services associated with the attorney network to cross-sell "both existing and new customers on additional service categories across the full default services 'spectrum.'" Opp. at 6. According to Plaintiffs, as a result of this cross-selling, LPS then obtained a "huge increase in the volume of *paid* services" and utilized robo-signing and other bad document practices to handle that increased business. Opp. at 6 (emphasis in original). All of this activity had the asserted effect of driving "default services revenue from $473 million in 2007 (29% of total revenues) to a staggering $1.06 *billion* in 2010 (43% of total revenues)." Opp. at 7 (emphasis in original).

Plaintiffs' new fraud theory is barely tethered to the Complaint and has no basis in reality. In their Opposition, Plaintiffs do not identify a single document, confidential witness statement, or other factual source that offers *any* factual support for their new assertions that (a) LPS' attorney network was cross-sold to obtain new business; and (b) that all, or even a significant part, of the increase in default services revenues between 2008 and 2010 were the result of this cross-selling in combination with the alleged improper business practices. Accordingly, this Court should afford these assertions no weight in evaluating Defendants' motion to dismiss. *Oxford Asset Mgmt., Ltd. v. Jaharis*, 297 F.3d 1182, 1188 (11th Cir. 2002) (court must accept all well-pleaded facts as true, but "conclusory allegations, unwarranted deductions of fact or legal conclusions masquerading as facts will not prevent dismissal").[1]

Not only is there no factual support for Plaintiffs' new fraud theory, it is clearly contradicted by Plaintiffs' own arguments. As Plaintiffs are forced to concede, LPS' default services business consisted of *seven* subsidiaries, only *two* of which (DocX and LPS Default Solutions) had anything to do with the alleged improper business practices. Opp. at 4-5. Moreover, the "huge increase" in default services business came at a time when the number of foreclosure filings in the United States skyrocketed to "7.4 times the historical average." Opp. at 6. It is therefore no surprise that a company in the business of providing foreclosure-related services increased its revenues. Finally, and perhaps most tellingly, Plaintiffs fail to identify any adverse financial effect from the supposed "revelation" of the improper business model at the end of the Class Period. LPS has continued to earn significant revenues from its default services business. *See* LPS Earnings Release, at Ex. D (July 25, 2011) (approximately 40% of LPS revenues in 4Q 2010, 1Q 2011, and 2Q 2011 attributable to default services business), attached as Exhibit 1.

Plaintiffs' attempt to salvage their case by rewriting the Complaint in their Opposition should be rejected. As a threshold matter, it is procedurally impermissible. *Loftin v. KPMG LLP*, No. 02-81166-CIV, 2003 WL 22225621, at *6 (S.D. Fla. Sept. 10, 2003) ("[Plaintiff] may not recharacterize his Complaint in a brief responding to a motion to dismiss, as a court reviewing a motion to dismiss may examine only the allegations of the Complaint." (citing

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[1] Indeed, the proof that there is no factual support for Plaintiffs' new fraud theory is right on the page – the operative section of the Opposition's Statement of Facts at page 6 contains no citations to the Complaint or any exhibits.

Grossman v. Nationsbank, 225 F.3d 1228, 1231 (11th Cir. 2000)). Moreover, even if it were permissible, Plaintiffs' claims still must be dismissed based on the absence of any factual support for their new theory of fraud.

II. Plaintiffs Have Not Adequately Pled the Elements of Their Claims

A. The *Janus* Decision Requires Plaintiffs to Identify Which Individual Defendant(s) Had "Ultimate Authority" Over Each Alleged Misstatement

In its decision in *Janus*, the Supreme Court held that the maker of a statement for purposes of securities fraud liability "is the person or entity with *ultimate authority* over the statement, including its content and whether and how to communicate it." *Janus Capital Grp., Inc. v. First Derivative Traders*, 131 S. Ct. 2296, 2302 (2011) (emphasis added). As set forth in Defendants' Opening Memorandum, Plaintiffs' Complaint runs afoul of *Janus* by failing to adequately allege that *any* of the individual Defendants had "ultimate authority" over the alleged misstatements in the Complaint. Open. Mem. at 14-15.

Plaintiffs are unable to deny that their Complaint lacks the necessary allegations of "ultimate authority." Instead, Plaintiffs attempt an end-run around the decision by effectively inventing two exceptions to its holding. First, Plaintiffs argue that *Janus*' holding does not apply to corporate insiders who make statements about their corporation. Opp. at 10. Plaintiffs are wrong. As courts have recently held, "the Court's interpretation of the verb 'to make' is an interpretation of the statutory language in question in this case, and therefore cannot be ignored simply because defendants are corporate insiders." *Hawaii Ironworkers Annuity Trust Fund v. Cole*, No. 3:10CV371, 2011 WL 3862206, at *4 (N.D. Ohio Sept. 1, 2011); *see also In re Coinstar Inc. Sec. Litig.*, No. C11-133 MJP, 2011 WL 4712206, at *10 (W.D. Wash. Oct. 6, 2011) (same).

Second, Plaintiffs argue, in the alternative, that *Janus*' holding does not apply to "individual speakers who utter statements in their capacity as company officials." Opp. at 11. Plaintiffs then purport to identify where in the Complaint they have specifically cited statements that "quote[] the precise words used by the speaker." Opp. at 10-11. In support of their position, Plaintiffs point to a passage in *Janus* where the Court noted that in the "ordinary case, attribution within a statement or implicit from surrounding circumstances is strong evidence that a statement was made by – and only by – the party to whom it is attributed." 131 S. Ct. at 2302.

Nowhere in *Janus*, however, does the Court hold that statements made by individuals in their capacity as company officials constitute an "ordinary case." Indeed, Justice Breyer suggested just the opposite when he observed that "Every day, hosts of corporate officials make statements with content that more senior officials or the board of directors have 'ultimate authority' to control." 131 S. Ct. at 2301 (Breyer, J., dissenting). Moreover, and contrary to Plaintiffs' hyperbole, it is not "a radical departure from common sense" to find that the members of the Board of Directors are the proper individual defendants in a securities fraud case. The company is the primary defendant – the corporate officials were acting as its agents – and it is the Board that has ultimate authority over the company and its public statements. Open. Mem. at 15; *see City of Tuscaloosa v. Harcros Chems*., 158 F.3d 548, 557 n.9 (11th Cir. 1998) ("senior officers of a corporation normally are agents and servants of the corporation").

Even if Plaintiffs were correct that "individual speakers who utter statements in their capacity as company officials" have "ultimate authority" over their statements, this standard means that Plaintiffs cannot assert, as they do in the Complaint (*see* Compl. ¶ 26), that an individual Defendant is liable for statements personally made by his or her co-defendants. *See Coinstar*, 2011 WL 12206, at *10 (dismissing claims against three defendants that were based on statements made by co-defendants). For example, Defendant Kersch, who is a Senior Vice President for Marketing and Corporate Communications, is alleged to have personally made only a handful of statements that appeared in various news stories. *See* Opp. at 11 (listing out Complaint references). Plaintiffs appear to concede that Ms. Kersch can be liable *only* for her statements and, at the same time, none of her individual co-defendants can be liable for her statements.

Janus mandates the dismissal of the Complaint as currently pled. Even if the Court disagrees, however, the Opposition makes it clear that any claim against an individual Defendant based on a misstatement not adequately alleged to have been "personally uttered, wr[i]t[ten], and/or signed" by that individual Defendant must be dismissed. Opp. at 10.

B. Plaintiffs Fail to Adequately Plead Falsity

1. LPS' Financial Statements

The Complaint repeatedly asserts that LPS' financial statements were false because the alleged improper business practices caused the Company's "revenues and other financial metrics" to be "artificially inflated" and Defendants "failed to disclose known trends, demands, commitments, events, and uncertainties that were reasonably likely to have a material effect" on the Company's results. Compl. ¶ 131(h), (i) (this paragraph is then cross-referenced throughout the Complaint). However, Defendants have already demonstrated that Plaintiffs have failed to adequately plead the existence of any artificially inflated revenues (the revenues were all actually earned by the Company) or any known trend or uncertainty that had a material effect on the Company's results. Open. Mem. at 16-18.

Plaintiffs make no effort to refute Defendants' arguments, thereby effectively abandoning their allegations that LPS' actual financial results were false. Instead, they now make unsupported allegations that the real problem with LPS' financial statements is that while the Company attributed its success to "increasing demand" for its services, it failed to note that the "source and cause" of this demand was the alleged improper business practices. Opp. at 14-16.

Plaintiffs' new falsity allegations are as deficient as their old ones. Plaintiffs provide no factual support for their new fraud theory that the alleged improper business practices were the "source and cause" of LPS' increased default services revenues. *See* Section I, *supra*.

Accordingly, Plaintiffs cannot assert that failing to disclose this information was a material omission. *Cole v. Health Mgmt. Assocs.*, No. 2:07cv00484-FtM-UA-DNF, 2009 WL 2713178, at *5-*8 (M.D. Fla. July 17, 2009) (dismissing complaint where plaintiffs failed to plead with particularity any facts showing that defendants' statements regarding its debt differed from the "true" facts).

Even if Plaintiffs had provided this factual support, they fail to adequately plead that LPS put the "source and cause" of its revenues at issue. In direct contrast to the cases cited in the Opposition, Plaintiffs point to no affirmative statements made by Defendants concerning the relationship between its attorney network, the processing of foreclosure documents, and revenues. For example, Plaintiffs rely upon the decision in *Chamberlain v. Reddy Ice Holdings, Inc.*, 757 F. Supp. 2d 683 (E.D. Mich. 2010) for the proposition that LPS was required to disclose its alleged improper business model. Opp. at 15. However, in *Chamberlain*, the defendants affirmatively attributed their financial success to their "ability to compete on price, service and quality in a 'highly competitive' packaged ice industry" while failing to inform investors that they had "entered into . . . market division agreements with their major competitors for the express prohibited anti-competitive purpose of driving up prices." *Id*. at 709.[2] Plaintiffs here do not allege any such direct nexus between the general statement that there was an "increasing demand" for LPS' default services and the alleged improper business practices. At no point did LPS attribute this increasing demand to its attorney network or how it processed foreclosure documentation. *See Cutsforth v. Renschler*, 235 F. Supp. 2d 1216, 1229-30, 1235-36, 1238,

[2] The other cases relied upon by Plaintiffs involve a similar nexus between the affirmative statements about the source of revenues and the alleged material omission. *See City of Roseville Employees' Ret. Sys. v. Horizon Lines, Inc.*, 713 F. Supp. 2d 378, 389 (D. Del. 2010) (company attributed increased revenues to negotiated rate increases and other competitive practices when actual source was illegal price-fixing, bid-rigging and customer-allocation scheme); *Steiner v. MedQuist, Inc.*, No. 04-5487, 2006 WL 2827740, at *16 (D.N.J. Sept 29, 2006) (company attributed revenues to increased sales to customers and acquisitions when actual source was illegal billing scheme); *In re Van der Moolen Holding N.V. Sec. Litig.*, 405 F. Supp. 2d 388, 400-01 (S.D.N.Y. 2005) (company attributed its ability to maintain good results to NYSE trading business when, in fact, its traders were generating revenue by engaging in practices that violated NYSE rules).

1240-41, 1248-49, 1256 (M.D. Fla. 2002) (repeatedly rejecting plaintiffs' argument that defendants' statements were false or misleading where plaintiffs failed to establish a connection between alleged omitted information and defendants' statements).

In a recent decision, a district court in this Circuit considered similar securities fraud allegations brought against a company relating to the processing of foreclosure documents. *See Philadelphia Fin. Mgmt. of San Francisco, LLC v. DJSP Enters., Inc.*, No. 10-161261-CIV, 2011 WL 4591541 (S.D. Fla. Sept. 30, 2011). In *Philadelphia Management*, the company allegedly *did* make affirmative statements about its "rigorous" processes to ensure the "efficient" and "accurate" handling of foreclosures. *Id.* at *14. Nevertheless, the court dismissed the claims because, *inter alia*, the plaintiffs (a) failed to "allege that [the company] did not use the technology it claimed or that these systems did not improve the firm's efficiency and accuracy"; and (b) admitted that the company "constantly hired and trained new employees to keep up with the skyrocketing demand for its services." *Id.* In contrast to *Philadelphia Management*, the alleged false statement in this case regarding "increasing demand" for the Company's services has a far more attenuated connection to the allegedly omitted information. Moreover, Plaintiffs admit that there *was* an "increasing demand" for LPS' default services. Opp. at 5-6. Under these circumstances, LPS' attribution of its increased revenues to "increasing demand" is not an actionable misstatement or any misstatement at all.

2. LPS' Statements About Its Attorney Network and Foreclosure Documentation Issues

Plaintiffs allege only one affirmative misstatement about LPS' attorney network, i.e., that the Company provides its clients with access to "a nationwide network of independent attorneys." Open. Mem. at 18. As set forth in Defendants' Opening Memorandum, however, all of the factual allegations used by Plaintiffs to suggest that these attorneys were not "independent" either fail to create that inference or are directly contradicted by the documents relied upon by Plaintiffs in their Complaint. Open. Mem. at 18-21.

Apparently realizing that their own factual allegations betray their arguments, Plaintiffs rely upon an unpublished district court decision to assert that it is inappropriate for this Court to consider the validity of their factual allegations by reviewing the Complaint and its attached exhibits. Opp. at 16-17. That is simply not the law in this Circuit. As the Eleventh Circuit has repeatedly stated, a court is only required to consider the *well-pleaded* facts contained in a complaint. *Oxford Asset Mgmt*., 297 F.3d at 1188. Accordingly, a court is "not require[d] to ignore specific factual details of the pleading in favor of general or conclusory allegations. Indeed, when the exhibits contradict the general and conclusory allegations of the pleading, the exhibits govern." *Griffin Indus. v. Irvin*, 496 F.3d 1189, 1205-06 (11th Cir. 2007). It is therefore completely appropriate for Defendants to "rely[] on the Newland testimony" (Opp. at 16) and the other exhibits attached to the Complaint to contradict Plaintiffs' general and conclusory allegations that the attorneys were not independent. Plaintiffs' failure to respond to these arguments should be treated as a waiver.

Beyond incorrectly stating the relevant law, Plaintiffs merely reiterate their unsupported belief that the network attorneys played a "central role" in Defendants' scheme, "which in turn drove LPS's revenue increase." Opp. at 17. Plaintiffs engage in the same futile exercise in an attempt to support the Complaint's allegations that LPS failed to adequately disclose its foreclosure documentation problems following the Company's internal investigation. Opp. at 18-20. Plaintiffs do not address Defendants' arguments that Plaintiffs (a) have failed to demonstrate that any of the disclosures about LPS' foreclosure documentation problems were false, and (b) appear to be demanding a level of detail in those disclosures that is not required by law. Open. Mem. at 21-23. Instead, Plaintiffs offer another three-page summary of their new fraud theory and conclude that LPS had an obligation to disclose the alleged improper business model when it discussed its foreclosure document problems.

Plaintiffs simply are unable to provide any well-pleaded factual allegations that support the existence of material misstatements. Accordingly, the Complaint must be dismissed.

III. Plaintiffs Fail to Adequately Plead a Strong Inference of Scienter

Under the Private Securities Litigation Reform Act of 1995 ("PSLRA"), Plaintiffs must allege facts sufficient to create a strong inference of fraud "for each defendant with respect to each violation." *Phillips v. Scientific-Atlanta, Inc.*, 374 F.3d 1015, 1016 (11th Cir. 2004). In attempting to meet this pleading burden, Plaintiffs fall woefully short.

Plaintiffs rely on the "core operations" doctrine and argue that this doctrine is consistent with Eleventh Circuit law. Opp. at 22-23. In fact, the Eleventh Circuit has repeatedly rejected allegations that defendants "must have known" about alleged fraud (whether brought as a "core operations," "group pleading" or any other "must have known" theory) on the grounds that such allegations are conclusory and speculative. *Mizzaro v. Home Depot, Inc.*, 544 F.3d 1230, 1250-51 (11th Cir. 2008) (rejecting allegations that defendants must have known about fraud based on its "breadth and amount"). Instead, a complaint must allege "facts showing how knowledge of the fraud would or should have percolated up to senior management." *Id.* at 1251.

Similarly, Plaintiffs' claims here are conclusory and speculative. Plaintiffs' scienter allegations rest entirely on the assertion that Defendants "are deemed to have known of LPS' improper business model," which was "the *source of almost half* the Company's total revenues." Opp. at 22-23 (emphasis in original). Plaintiffs' argument that there was an improper business model that generated half of LPS' revenue is entirely without factual support. *See* Section I, *supra*. Moreover, Plaintiffs do not even attempt to allege (a) how Defendants would have or could have known about the foreclosure documentation problems prior to LPS' 2009 internal investigation of the DocX subsidiary; or (b) how Defendants would have or could have known about alleged improprieties related to its attorney network, given that there was *no finding* during the Class Period by any court or governmental agency that LPS' practices were improper. *See*

Open. Mem. at 11-12, 26-27. Simply noting that two of the individual Defendants sometimes visited the DocX subsidiary is clearly insufficient. Open. Mem. at 25-26.

Plaintiffs also rely on the Eleventh Circuit's holding in *Mizzaro*, but a close examination of that case (as opposed to Plaintiffs' cursory references to it) reveals that it is actually fatal to Plaintiffs' claims. Opp. at 20, 21, 25, 26. In *Mizzaro*, Home Depot (similarly to LPS here) was subject to a flurry of negative publicity, litigation, and government investigations related to allegations that it had engaged in improper business practices. 544 F.3d at 1243-46. These allegedly improper business practices related to Home Depot's use of "return to vendor" chargebacks for defective merchandise. The Eleventh Circuit affirmed the dismissal of the case on scienter grounds and cited a number of reasons that apply equally to this case.

<u>Confidential Witnesses Provide No Direct Evidence of Fraud</u>: The *Mizzaro* court noted that the confidential witnesses cited in the complaint did not claim that any of the individual defendants expressly ordered or even suggested that Home Depot employees committed fraud. Nor did these confidential witnesses claim that any of the individual defendants knew about the alleged fraud. *Id.* at 1247-48. Here, Plaintiffs cite statements of no less than 17 confidential witnesses, yet, as in *Mizzaro*, none of those witnesses identify any communications suggesting that the individual Defendants knew of any improper business practices prior to the Company's internal investigation in 2009.

<u>Amount of Fraud is Speculative</u>: In *Mizzaro*, the plaintiffs alleged, based on public speculation about how many improper chargebacks had occurred at a single Home Depot store, that the fraudulent practices amounted to $1 billion in revenues per year. *Id.* at 1251. Not surprisingly, the Eleventh Circuit found that this claimed amount was "wholly speculative" and unreliable. *Id.* Likewise, Plaintiffs here offer no factual basis for their claim that the attorney network and the foreclosure documentation problems were "the *source of almost half* the Company's total revenues by the end of the Class Period." Opp. at 23-24 (emphasis in original).

At best, Plaintiffs rely on the unremarkable fact that, like most companies, LPS "cross-sells" its services to its customers. Opp. at 5-6. As in *Mizzaro*, this is "far too shaky a foundation" to support an inference of scienter. 544 F.3d at 1251.

Type of Fraud Would Be Difficult for Senior Management to Detect: The Eleventh Circuit found that "lying to some vendors to obtain excessive rebates" was something that could be done by lower-level employees without the necessary participation of senior corporate officers. *Id.* Similarly, in this case, the key foreclosure documentation problems occurred at DocX, a small LPS subsidiary, and involved operational activities by lower-level employees. Like in *Mizzaro*, the types of improper business practices at issue – e.g., surrogate signing – clearly did not require the participation of LPS senior officers. Open. Mem. at 6-7.

Lack of Suspicious Stock Sales: As the Eleventh Circuit explained, the absence of insider stock sales or purchases timed to maximize returns on nonpublic information "weighs against inferring scienter." *Mizzaro*, 544 F.3d at 1253. Like the plaintiffs in *Mizzaro*, Plaintiffs here fail to allege that any of the individual Defendants engaged in suspicious stock sales or purchases.

Based on the *Mizzaro* decision alone, it is clear that the Plaintiffs have failed to adequately plead a "strong inference" of scienter.

IV. Plaintiffs Fail to Adequately Plead Loss Causation

Plaintiffs fail to adequately plead loss causation because none of the disclosures that led to LPS stock price declines actually "revealed" any new information about Defendants' supposed fraud. Open. Mem. at 31-34. In response to this argument, Plaintiffs trot out a series of feints and dodges that cannot prevent the dismissal of their claims.

First, relying on a single, out-of-circuit district court opinion, Plaintiffs assert that Defendants' loss causation arguments cannot be considered on a motion to dismiss because they are "intensely fact-specific." Opp. at 30. Plaintiffs simply ignore that numerous courts, including courts in this Circuit, have dismissed complaints where it is clear that the facts revealed in an alleged corrective disclosure could not plausibly have caused the plaintiff's loss because those facts were previously known and digested by the market. *See* Open. Mem. at 30; *Meyer v. St. Joe Co.*, No. 5:11-cv-27/RS-EMT, 2011 WL 3750324, at *7 (N.D. Fla. Aug. 24, 2011) (dismissing complaint where alleged corrective disclosure was "entirely based on previously disclosed facts and offer[ed] nothing new concerning prior improper practices").

Second, Plaintiffs argue, based on their new fraud theory, that the *Harris* complaint (filed and dismissed in 2008) alleging illegal fee-splitting, as well as the related news articles and Company disclosures, "did not disclose that the alleged illegal fee-splitting and undue control LPS exerted over its attorneys was systemic, and integral to the rise in the Company's default services revenues." Opp. at 31. Even if this new fraud theory could be properly raised in an Opposition (*see* Section I, *supra*), it actually undermines Plaintiffs' contention that the April 16, 2009 *Dow Jones Bankruptcy Review* article they rely upon as a "corrective disclosure" on this topic led to any loss. The *Dow Jones* article ignores the dismissal of the *Harris* complaint and baldly suggests that the fee-splitting might have had a nationwide impact, but is completely silent on the topic of whether it had any relationship to the increase in LPS' default services revenues. *See FindWhat Investor Grp. v. FindWhat.com*, No. 10-10107, 2011 WL 4506180, at *121 n.29 (11th Cir. Sept. 20, 2011) ("Causation . . . requires the Plaintiff to demonstrate the joinder between an earlier false or deceptive statement, for which the defendant was responsible, and a subsequent corrective disclosure that reveals the truth of the matter . . . ."). In other words, if the *Harris* complaint and related items were not corrective disclosures, then neither was the *Dow Jones* article, which offers no information about the alleged fee-splitting that supports Plaintiffs' new fraud theory.

Third, Plaintiffs claim that the April 3, 2010 *Wall Street Journal* (*WSJ*) article revealed "several new facts that were not in LPS's 2009 Form 10-K" about the foreclosure documentation problems. Opp. at 32. It is not enough, however, for an article to simply reveal "several new facts." Instead, the key is whether "[t]he author . . .add[s] *significant original insight* that identifies, reveals, or corrects prior misstatements, omissions, or improper accounting practices." *Meyer*, 2011 WL 3750324, at *6 (emphasis added). The *WSJ* article does not provide any information that qualifies as "significant original insight." For example, where an investigation of the United States Attorney for the Middle District of Florida could only have been civil and/or criminal in nature, the article's disclosure that the investigation was criminal was hardly an insight. *Nat'l Junior Baseball League v. Pharmanet Dev. Grp., Inc.*, 720 F. Supp. 2d 517, 561 n.34 (D.N.J. 2010) ("To the extent that [alleged corrective disclosures] merely provided more details about [] public disclosures, they are insufficient to establish loss causation.") Moreover, the article did not state or even remotely suggest that the foreclosure documentation problems were the "true source" of LPS' default services revenues.

Finally, Plaintiffs argue that the total mix of information released to the public in the period from October 1-4, 2010 revealed to investors that the attorney network and improper foreclosure documentation practices were "the Company's true revenue source." Opp. at 33-34. Plaintiffs' reading of the October 1, 2010 and October 4, 2010 disclosures is unsupported by the actual texts. The inflammatory video from Congressman Alan Grayson, to which the cited October 1 disclosure refers, alleges (without factual basis) that LPS' improper conduct was *organized*, but does not allege that LPS "controlled" the network attorneys or that there was some elaborate fraudulent scheme by which LPS generated all of its default services revenues. Meanwhile, LPS, in its October 4 press release, denied that there were any widespread problems with its business practices and disclosed that DocX constituted "less than one percent of LPS' revenue." The October 2010 disclosures, considered individually or collectively, cannot possibly be said to have revealed the existence of the fraud posited by Plaintiffs' new fraud theory.

Dated: October 21, 2011

By: /s/ Lyle Roberts

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 21st day of October, 2011, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send a Notice of Electronic Filing to all counsel of record.

/s/ Lyle Roberts
Lyle Roberts