



### **STATEMENT OF FACTS**

Respondents incorporate by reference their admissions and denials to the OSC below. Furthermore, Respondents state that at no time did they make any fraudulent representations in connection with the sale of any security.

### **STATEMENT OF RELIEF**

Respondents seek dismissal of this action with prejudice based on the fact that they did not make any fraudulent representations in connection with the sale of any security under Utah Code Section 61-1-1.

### **FIRST DEFENSE**

The OSC fails to state a claim against Respondents upon which relief may be granted.

### **SECOND DEFENSE**

Responding to the specific paragraphs of the OSC, Respondents admit, deny, and otherwise allege as follows:

1. Respondents lack sufficient knowledge and information as to the truth of the allegations set forth in Paragraph 1 of the OSC and therefore deny the same.
2. Respondents admit the allegations of Paragraph 2 of the OSC.
3. Respondents admit the allegations of Paragraph 3 of the OSC.
4. Respondents admit the allegations of Paragraph 4 of the OSC.
5. Respondents admit the allegations of Paragraph 5 of the OSC.
6. Respondents deny the allegations of Paragraph 6 of the OSC.
7. Respondents deny the allegations of Paragraph 7 of the OSC.

8. Respondents lack sufficient knowledge and information as to the truth of the allegations set forth in Paragraph 8 of the OSC and therefore deny the same.

9. Respondents lack sufficient knowledge and information as to the truth of the allegations set forth in Paragraph 9 of the OSC and therefore deny the same.

10. Respondents lack sufficient knowledge and information as to the truth of the allegations set forth in Paragraph 10 of the OSC and therefore deny the same.

11. Answering the allegations contained in Paragraph 11 of the OSC, Respondents assert that the email referred to therein speaks for itself. Respondents deny any portion of Paragraph 11 that is inconsistent with the email.

12. Answering the allegations contained in Paragraph 12 of the OSC, Respondents admit only that beginning in approximately march 2009, there were phone calls among S.P., Trent Williams (“Williams”) and Daniel Prescott (“Prescott”). Respondents deny the remaining allegations contained in Paragraph 12 of the OSC.

13. Answering the allegations contained in Paragraph 13 of the OSC, Respondents assert that the email, Escrow Instructions, and Reo Acquisition and Finance Agreement referred to therein speak for themselves. Respondents deny any portion of Paragraph 13 that is inconsistent with the email, Escrow Instructions, or Reo Acquisition and Finance Agreement.

14. Answering the allegations contained in Paragraph 14 of the OSC, Respondents assert that the Escrow Instructions referred to therein speaks for itself.

Respondents deny any portion of Paragraph 14 that is inconsistent with the Escrow Instructions.

15. Answering the allegations contained in Paragraph 15 of the OSC, including all subparts, Respondents assert that the Reo Acquisition and Financing Agreement referred to therein speaks for itself. Respondents deny any portion of Paragraph 15, including all subparts, that is inconsistent with the Reo Acquisition and Financing Agreement.

16. Answering the allegations contained in Paragraph 16 of the OSC, Respondents admit only that Landmark REO Club, LLC's ("LRC") account at Zions Bank received a wire transfer of \$300,000.00 on or about April 6, 2009. Respondents deny the remaining allegations contained in Paragraph 16 of the OSC.

17. Answering the allegations contained in Paragraph 17 of the OSC, Respondents assert that the email referred to therein speaks for itself. Respondents deny any portion of Paragraph 17 that is inconsistent with the email.

18. Answering the allegations contained in Paragraph 18 of the OSC, Respondents assert that the email referred to therein speaks for itself. Respondents deny any portion of Paragraph 18 that is inconsistent with the email.

19. Answering the allegations contained in Paragraph 19 of the OSC, Respondents assert that the email and Commercial Loan and Security Agreement referred to therein speak for themselves. Respondents deny any portion of Paragraph 19 that is inconsistent with the email or Commercial Loan and Security Agreement.

20. Answering the allegations contained in Paragraph 20 of the OSC, including all subparts, Respondents assert that the Commercial Loan and Security Agreement referred to therein speaks for itself. Respondents deny any portion of Paragraph 20, including all subparts, that is inconsistent with the Commercial Loan and Security Agreement.

21. Answering the allegations contained in Paragraph 21 of the OSC, Respondents assert that the Commercial Loan and Security Agreement referred to therein speaks for itself. Respondents deny any portion of Paragraph 21 that is inconsistent with the Commercial Loan and Security Agreement.

22. Answering the allegations contained in Paragraph 22 of the OSC, Respondents admit only that S.P. did not receive an interest in any real property in connection with the transactions referred to above. Respondents deny the remaining allegations contained in Paragraph 22 of the OSC.

23. Answering the allegations contained in Paragraph 23 of the OSC, including all subparts, Respondents assert that LRC's bank account records speak for themselves. Respondents deny any portion of Paragraph 23, including all subparts, that is inconsistent with LRC's account records.

24. Answering the allegations contained in Paragraph 24 of the OSC, including all subparts, Respondents admit only that Williams and Prescott, among others, traveled to Costa Rica and met with S.P. in May 2009. Respondents deny the remaining allegations contained in Paragraph 24 of the OSC, including all subparts.

25. Answering the allegations contained in Paragraph 25 of the OSC, Respondents admit only that Landmark Financial Services, LLC's ("LFS") account at Zions Bank received a transfer of \$250,000.00 in August 2009. Respondents deny the remaining allegations contained in Paragraph 25 of the OSC.

26. Answering the allegations contained in Paragraph 26 of the OSC, Respondents assert that the Commercial Loan and Security Agreement referred to therein speaks for itself. Respondents deny any portion of Paragraph 26 that is inconsistent with the Commercial Loan and Security Agreement.

27. Answering the allegations contained in Paragraph 27 of the OSC, including all subparts, Respondents assert that the Commercial Loan and Security Agreement referred to therein speaks for itself. Respondents deny any portion of Paragraph 27, including all subparts, that is inconsistent with the Commercial Loan and Security Agreement.

28. Answering the allegations contained in Paragraph 28 of the OSC, including all subparts, Respondents assert that LFS' bank account records speak for themselves. Respondents deny any portion of Paragraph 23, including all subparts, that is inconsistent with LFS' account records.

29. Answering the allegations contained in Paragraph 29 of the OSC, Respondents assert that the email referred to therein speaks for itself. Respondents deny any portion of Paragraph 29 that is inconsistent with the email.

30. Answering the allegations contained in Paragraph 30 of the OSC, Respondents assert that the response referred to therein speaks for itself. Respondents deny any portion of Paragraph 30 that is inconsistent with the response.

31. Answering the allegations contained in Paragraph 31 of the OSC, Respondents assert that the Commercial Loan and Security Agreement referred to therein speaks for itself. Respondents deny any portion of Paragraph 31 that is inconsistent with the Commercial Loan and Security Agreement.

32. Answering the allegations contained in Paragraph 32 of the OSC, Respondents admit only that S.P. received monthly interest payments through September 2010 totaling approximately \$247,000.00. Respondents deny the remaining allegations contained in Paragraph 32 of the OSC.

33. Respondents lack sufficient knowledge and information as to the truth of the allegations set forth in Paragraph 33 of the OSC and therefore deny the same.

34. Answering the allegations contained in paragraph 34 of the OSC, Respondents admit only to a conference all in approximately August 2009 among B.T., D.F., Prescott, and Brent Rose regarding the purchase of real estate. Respondents deny the remaining allegations contained in Paragraph 34 of the OSC.

35. Respondents admit the allegations set forth in Paragraph 35 of the OSC.

36. Respondents admit the allegations set forth in Paragraph 36 of the OSC.

37. Answering the allegations contained in Paragraph 37 of the OSC, including all subparts, Respondents admit only that Prescott stated that B.T. had the

option of using a management company, which could assist with seller financing. Respondents deny the remaining allegations contained in Paragraph 37 of the OSC, including all subparts.

38. Answering the allegations contained in Paragraph 38 of the OSC, Respondents admit only that Rose contacted B.T. to let him know that certain real property was available for purchase. Respondents deny any remaining allegations contained in Paragraph 38 of the OSC.

39. Respondents lack sufficient knowledge and information as to the truth of the allegations set forth in Paragraph 39 of the OSC and therefore deny the same.

40. Respondents lack sufficient knowledge and information as to the truth of the allegations set forth in Paragraph 40 of the OSC and therefore deny the same.

41. Answering the allegations contained in Paragraph 41 of the OSC, Respondents admit only that B.T. wired funds in connection with the purchase of real property. Respondents deny any remaining allegations contained in Paragraph 41 of the OSC.

42. Answering the allegations contained in Paragraph 42 of the OSC, Respondents assert that the Real Estate Purchase and Sale Agreement referred to therein speaks for itself. Respondents deny any portion of Paragraph 42 that is inconsistent with the Real Estate Purchase and Sale Agreement.

43. Answering the allegations contained in Paragraph 43 of the OSC, Respondents assert that the Form of Bill of Sale and Management Agreement referred to

therein speak for themselves. Respondents deny any portion of Paragraph 43 that is inconsistent with the Form of Bill of Sale and Management Agreement.

44. Answering the allegations contained in Paragraph 44 of the OSC, including all subparts, Respondents assert that LFS' bank account records speak for themselves. Respondents deny any portion of Paragraph 44, including all subparts, that is inconsistent with LFS' account records.

45. Answering the allegations contained in Paragraph 45 of the OSC, Respondents assert that the mailing referred to therein speaks for itself. Respondents deny any portion of Paragraph 45 that is inconsistent with the mailing.

46. Respondents lack sufficient knowledge and information as to the truth of the allegations set forth in Paragraph 46 of the OSC and therefore deny the same.

47. Respondents admit the allegations set forth in Paragraph 47 of the OSC.

48. Respondents re-allege and incorporate their responses to Paragraphs 1 through 47 of the OSC as if fully set forth herein.

49. Respondents deny the allegations set forth in Paragraph 49 of the OSC.

50. Respondents deny the allegations set forth in Paragraph 50 of the OSC, including all subparts.

51. Respondents deny the allegations set forth in Paragraph 51 of the OSC, including all subparts.

52. Respondents deny the allegations set forth in Paragraph 52 of the OSC, including all subparts.

53. Respondents re-allege and incorporate their responses to Paragraphs 1 through 52 of the OSC as if fully set forth herein.

54. Respondents deny the allegations set forth in Paragraph 54 of the OSC.

55. Respondents deny the allegations set forth in Paragraph 55 of the OSC, including all subparts.

56. Respondents deny the allegations set forth in Paragraph 56 of the OSC, including all subparts.

### **THIRD DEFENSE**

Respondents deny all of the allegations in the OSC that are not specifically admitted.

WHEREFORE, Respondents pray that the OSC be dismissed with prejudice.

DATED this 31<sup>st</sup> day of July, 2013.

BENNETT TUELLER JOHNSON & DEERE

  
Shane L. Keppner  
*Attorneys for Respondents*

**CERTIFICATE OF SERVICE**

I hereby certify that on this 31<sup>st</sup> day of July, 2013, I caused to be hand-delivered, a signed original and a true and correct copy of the foregoing **RESPONSE TO NOTICE OF AGENCY ACTION AND ORDER TO SHOW CAUSE** upon the following:

**Original:**

Administrative Court Clerk  
c/o Maria Lohse  
Utah Division of Securities  
160 E. 300 S., 2<sup>nd</sup> Floor  
Box 146760  
Salt Lake City, UT 84114-6760

**Copy:**

Paul Amann  
Assistant Attorney General  
Utah Division of Securities  
160 East 300 South, 5<sup>th</sup> Floor  
Salt Lake City, UT 84114-0872

