NO. 339386-III

COURT OF APPEALS, DIVISION III OF THE STATE OF WASHINGTON

SAMUEL SALMON and ROXY SALMON,
Appellant,

v.

MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.,
Respondent

On Appeal from the Superior Court Of The
State Of Washington for Stevens County

BRIEF OF APPELLANT

Samuel Salmon and Roxy Salmon
Pro Se representative for
SAMUEL SALMON and ROXY SALMON, as
Appellant

Samuel Salmon
Roxy Salmon
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REGULATIONS AND RULES

Judgments and Costs-every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in his pleadings.

CR 55 (b) ---------- See page 13, 21, 25
Entry of Default Judgment. As limited in rule 54(c), judgment after default may be entered as follows, if proof of service is on file as required by subsection (b)(4):
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CR 59 (a)(7) ---------- See page 23, 26, 30
That there is no evidence or reasonable inference from the evidence to justify the verdict or the decision, or that it is contrary to law;

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CJC RULE 2.3 (B)) ---------- See page 23
A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, or engage in harassment, and shall not permit court staff, court officials, or others subject to the judge's direction and control to do so.

OTHER AUTHORITIES

Jaxon v. Circle K. Corp. 773 F.2d 1138, 1140 (10th Cir. 1985)
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Maty v. Grasselli Chemical Co., 303 U.S. 197 (1938),
---------- See page 43

Picking v. Pennsylvania R. Co. 151 Fed. 2nd 240;
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Platsky v. C.I.A. 953 F.2d. 25.
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Sims v. Aherns, 271 SW 720 (1925),
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Brief of Appellant

INTRODUCTION

In June of 2013 the Salmons filed this Consumer Protection Action against the respondent Mortgage Electronic Registration Systems, Inc. hereinafter (MERS). On July 19, 2013 Washington Secretary of State agency served service of process upon MERS. Over a year later on February 2015 the trial court granted an Order of Default Judgment in the Salmon's favor. In July 2015 MERS filed a motion to vacate the Order of Default (without a written notice of appearance) alleging that the Secretary of State served MERS incorrectly by serving a MERS "Washington entity" and not the correct MERS Delaware entity. The Salmons found no Washington entity registered to MERS at the Washington Department of Licensing. MERS also alleged that their registered agent Robert Jacobsen was disqualified because of a California case. The Salmons found the California case was dismissed with prejudice in favor of MERS "registered agent" Robert Jacobsen. The trial court granted MERS Order to Vacate the Default Judgment. MERS then

moved the trial court to dismiss the case alleging res judicata applies to the CPA case because of the Salmon's previous DOTA case filed on November 17, 2010. Salmons allege that MERS was properly served. Also the res judicata doctrine was misapplied because the two cases are legally, fundamentally different and do not meet the required elements necessary for the doctrine to apply. Recently the Salmons found MERS to be operating in Washington State in what is legally described as a monopoly. The Salmons are seeking a proper legal remedy to protect them from MERS injurious actions to the Salmons and others. The Salmons pursue an adequate remedy.

BACKGROUND:

(1) The appellants Roxy and Samuel Salmon invested their life savings over 20 years into buying a property and building their home in the Colville area. The home was finished. A loan from Countrywide FSB was obtained in 2007 to finance the construction loan balance.

The Salmons led a thriving construction business until 2009. Suddenly in early 2009 the Salmons highly qualified and pre-approved clients could no longer secure loans to build their homes.

This 2008-09 sudden collapse of the construction market made it impossible for the Salmons to continue in their life time profession of building custom homes. Because of the sudden depletion of construction loans the Salmons construction business collapsed. Bank of America, National Association (Bank of America) presumed the position of servicer of the Salmons loan in 2008 without recording the deed of trust assignment at the Stevens County Recorder's office. After negotiation over the phone with the new servicer Bank of America to lower the payments, the Salmons agreed to make partial payments for 6 months until Bank of America could "work out" an affordable payment permanently. At the end of the 6 months Bank of America instead raised the mortgage payments against their promise. MERS caused injury to the Salmon in recording the deed of trust assignment to Bank of America on September 23 2010 allowing Bank of America to proceed with an inappropriate foreclosure action.

(2) The Salmons found many unlawful actions MERS was engaging in causing the Salmons injury, one of which was that MERS appointed ReconTrust Company N.A. (Recontrust) as successor trustee to the deed of trust. However, Recontrust was owned by Bank of America and illegally operating as the trustee.

MERS action was illegal and injurious to the Salmons because MERS enabled unqualified parties to engage in illegal foreclosure actions.

The Salmons filed a complaint with Washington's Attorney General (AG) Rob McKenna pointing this and many other errors out.

In August of 2011 the AG lawyer Jim Sugarman filed suit against Recontrust, NA for illegal foreclosure practice, but the large issues of who the note's real beneficiary is, was never corrected or resolved in the courts.

(3) The AG forwarded the Salmon's complaint to the Federal Office of the Comptroller of Currency (OCC). The OCC sent the Salmon's complaint to Bank of America headquarters. On December 9th 2010 the Salmons filed a Deed of Trust Act (DOTA) complaint against Bank of America, *et al* in the Stevens County Superior Court. On December 20th 2010 Bank of America headquarters sent a letter to the Salmons stating in paragraph 4 that "The current owner of the (Salmon's) Note is Federal National Mortgage Association". On December 21st 2010 Bank of America removed the case to Federal Court in Spokane pursuant diversity. The Salmons filed the letter from Bank of America as evidence in the federal court showing that in Bank of America's own admission

FNMA owned the note, thereby proving the foreclosure to be illegal. In spite of this letter, federal judge Rosanna Malouf Peterson completely ignored the letter from Bank of America and dismissed the case, inappropriately ignoring Washington State DOTA laws (**RCW** 61.24 *et al*).

(4) FNMA charter started with a billion dollars and over the years became the predominant vehicle to fund more than 80 percent, about 65 million Notes, or over 11 trillion dollars in real-estate loans until 2008. The "Bank" evolved into the role of servicer and no longer acted as the bank or lender anymore, but only a "servicer" usurpatiously posing as the "Bank", and the respondent MERS who has no legal description or position in the chain of title or mortgage business, magically became the "Beneficiary" whom by law is required to be the note's owner, or holder.

(5) MERS became the sole controller listed as "Beneficiary" illegally monopolizing the deeds of trust. Hence MERS by "nominee" beneficiary became a monopoly controlling the interest in all of FNMA's loans through their deeds of trust, by conducting assignments and conveying the deed of trust to the servicer who in turn illegally foreclosed on millions of families' homes. Even though

the FNMA loans were not at any time owned or held by MERS, or by their assigned servicers.

MERS was never prosecuted for their monopoly of unfair and criminal assignments of the deeds of trust.

(6) It wasn't until 2012, when the Salmons discovered MERS operated as an illegal **monopoly** in the business of assigning the deeds of trust. **Bain v. Metro. Mortg. Grp., Inc., 175 Wn.2d 83 (2012),** ¶1 CHAMBERS, J. – "In the 1990s, the Mortgage Electronic Registration Systems Inc. (MERS) was established by several large players in the mortgage industry." The list of MERS principles are listed on MERS web site.

Because of the unadvertised hidden way MERS conducted business on a wholesale level; the understanding that MERS was a monopoly was indiscernible until late 2012 after being exposed in the Bain v Metropolitan *et al*, case.

Therefore, for these reasons the Salmons filed this Consumer Protection Action on June 28, 2013 against MERS in which MERS failed to appear.

ASSIGNMENTS OF ERROR

1. The trial court erred on July 21, 2015 by granting MERS's Order Vacating Order of Default without providing clear and convincing evidence that the Washington Secretary of State service of process was invalid, (see CP at 19, 20).
2. The trial court erred in denying Salmon's September 01, 2015 Motion for Discovery in the September 22, 2015 hearing. Discovery was necessary for findings of fact to show MERS official position with the Washington State Department of Revenue as connected with Washington Secretary of State's service of process. The court was only relying only on MERS hearsay and a dismissed California Case as alleged proof that Washington State agencies were in error in MERS proper service of process.
3. The trial court erred in granting MERS's Order to Dismiss Salmon's CPA cause of action with Prejudice on September 22, 2015, (see CP at 24, 25) pursuant res judicata because the elements to claim the doctrine of res judicata were unsubstantiated.

4. The trial court erred by not recusing Judge Neilson for unfair bias against the Salmons, and Robert Jacobsen.
5. The trial court erred in ignoring the Salmon's August 26, 2013 ex parte service with attached Orders of Default submitted and filed pursuant to; **RCW** 25.05.536; (see CP at 40-42). The trial court should have addressed the ex parte orders by either granting or denying them.
6. The trial court erred by erasing the Salmon's ex parte service with the attached orders (see CP at 40-42) filed and recorded online, on August, 26, 2013 causing Injury to and misappropriation of record.
7. The trial court erred in denying the Salmon's Motion to Reconsider for the above Assignments of Error 1-6.

ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Order to Vacate Default

Was the trial court correct in granting MERS's Order Vacating Order of Default (see CP at 19, 20) without providing clear and convincing evidence that the service of process was incorrect? The

burden of demonstrating the invalidity of agency action is on the party asserting invalidity in **RCW** 34.05.570(1) (a).

a. MERS alleged claims that the Secretary of State registration under MERS name was a Washington Corporation and not their Delaware Corporation; however there has never been a business Corporation in Washington State with the respondent's name. If Secretary of State Records are incorrect MERS would be unserviceable for litigation purposes in Washington State, (see RP at 3 lines 6-10).

2. **Was the Discovery Order Denied Improperly?**

Should the Salmon's September 1, 2015 Order on Motion for Discovery have been Granted before the case was dismissed on September 30,2015, (see CP at 24-026) without any evidentiary findings or conclusions to substantiate the Order Vacating Default?

a. The United States California Northern District Court Case No. 4:09-cv-03600 case MERS relies on was dismissed with prejudice. So how could this California case have any legal bearing in disproving Robert Jacobsen is

MERS registered agent pertaining to service of process? (See RP at 5 lines 13-25, RP at 23 lines 17-22). After the Salmons' found the California case was dismissed with prejudice MERS council no longer used the case as evidence so why was discovery denied?

b. Does Washington State agency records show that MERS is the correct entity served? INCORP SERVICES was MERS registered agent recorded with WA Secretary of State and was replaced by Robert Jacobsen under the same Secretary of State account, which UBI number matches MERS Washington Department of Revenue records.

c. Granting Discovery would unveil MERS Department of Revenue records which would help resolve the question of proper service, and whether MERS would be legally required to carry a business licensed to conduct their business in Washington State pertaining to assigning hundreds of thousands of deeds of trust, and whether MERS operated in the capacity legally defined as a monopoly in the State of Washington.

3. Case Dismissed Without the Elements of Res Judicata

Does the doctrine of res judicata apply if; MERS did not appear in the Salmons' original 2010 case No. 10-2-00596-8, and MERS was not a party in the Salmons' second Quiet Title case No. 11-2-00426-9 in 2011?

a. If the elements were not sufficient for MERS to claim the doctrine of res judicata in all four categories in order to properly dismiss the case? Judgment - Res Judicata - Elements An adjudicatory proceeding is barred by the doctrine of res judicata only if it is identical to a prior adjudicatory proceeding with respect to (1) subject matter, (2) cause of action, (3) persons and parties, and (4) the quality of the persons for or against whom the claim is made; **Civil Serv Comm'n. v. City Of Kelso**, 137 Wn.2d 166, (1999).

b. If the Salmons' original 2010 case No. 10-2-00596-8 was improperly removed to federal court for lack of jurisdiction over the subject matter pursuant **CR** 12 (b)(1) because the Salmons' property should be considered the proper subject matter of the original DOTA case pursuant **RCW** 4.12.010?

4. **Recusal for unfair bias-Denied**

Was Judge Allen C. Neilson correct in denying Salmon's Order to Recuse Himself?

a. Did Judge Neilson express unfair bias against the Salmon's when he refused to acknowledge the Salmon's original Orders for Default?

b. Did Judge Neilson express unfair bias against MERS registered Agent Robert Jacobsen when he called Robert Jacobsen a fly-by-night scam artist? (See RP at 26 lines 24-25 and RP at 39 lines 17-25).

c. Did Judge Allen C. Neilson display unfair bias against the Salmon in the October 13, 2015 hearing on Vacating MERS Default Order, in defending MERS on the record by inappropriately examining the Salmons' previous cases or res judicata (which is irrelevant to MERS default) as inferred reason to Vacate the Order of Default Judgment, see RP at 6 lines 8-25.

d. Did the trial court further the bias in granting MERS'**s** Order to Dismiss Salmon's CPA cause of action with

Prejudice on September 22, 2015, pursuant res judicata when the elements to claim the doctrine of res judicata were unsubstantiated? (See CP at 24, and CP at 25).

5. Original Orders Ignored

Should the Salmon's original Order for Default (see CP at 40-42) filed on August 26, 2013 have been officially Granted, or Denied because it was accompanied with an ex parte service fee, instead of the "courtesy" letter sent of September 25, 2013 pursuant **CR** 55 (b), **CR** 54 (c)? (See CP at 16, RP at 41 lines 1-9) (assignment of error 5).

6. Original Orders Erased from record

Should the act of erasing the Salmon's recorded Orders for Default with the ex parte service at CP at 40-42 be considered a felony pursuant **RCW** 40.16.020?

a. The Salmons' case was impeded and injured when the court refused to acknowledge the Salmons' Orders and later erased from the record (assignment of error 6).

7. **Motion to Reconsider Denied**

Should the Motion to Reconsider been Granted for issues 1-6?

The trial court did not hear or rule on the Salmons case at any time, and denied Salmons reconsideration at the November 27, 2015 hearing even without MERS present for the hearing.

STATEMENT OF THE CASE

On June 28, 2013 the Salmons filed a complaint and summons on MERS registered agent "Robert Jacobsen" as listed with the Washington Secretary of State with service of process via Thurston County Sherriff's Department. On July15, 2013 the Thurston County Sherriff was unable to serve the summons to MERS's registered agent. On July19, 2013 the Salmons provided proper service of process on MERS through WA Secretary of State and filed the affidavit and declaration of service with the trial court. MERS did not timely respond to the summons, (see CP at 1-3). On August 22, 2013 the Salmons filed a Motion for Default Judgment with an Affidavit in Support of Motion, in the trial court, (see CP at 04-015). Later the Salmons visited the clerk's desk to request a

judicial response. The Salmons were promptly instructed by a clerk that in order to get the Orders before the judge a thirty dollar *ex parte* service fee was required, or a hearing. The Salmons were unsure how to request a hearing. On August, 26, 2013 the Salmons filed the two Orders with the ex parte service fee. The ex parte service was posted in the online Court Case Summary. The trial court did not respond. After some time the Salmons called the court asking if the judge had addressed the orders, to find he had not. On the second call the Salmon's asked if a meeting could be set up to address the issue. The judge's secretary explained in short that the judge does not meet with pro se litigants and was telephonically denied correspondence with the trial court judge. Much later the Salmons noticed the ex parte service was erased from the record, and without notice to the Salmons. On September 18, 2013 the trial court's Judge Allen C. Nielson mailed an informal letter to the Salmons (see CP at 6).

On December 18, 2013 the Salmons filed a response to Judge Allen C. Nielson's informal letter asking to be informed by the Judge of how the Salmons "Motion doesn't fit the "proper form" pertaining to **CR** 55." Judge Allen C. Nielson never responded.

On January 9, 2015 the trial court clerk sent and filed a notice of "Clerk's Motion For Dismiss for Want Of Prosecution." On January 23, 2015 the Salmons filed for a Correction of Motion and Declaration for Default. On the February 17, 2015 hearing, Judge Patrick Monasmith signed the Salmon's Order of Default Judgment, and posted it the same day. On June 19, 2015 without notice of appearance MERS filed a motion to vacate the order of default. On July21, 2015 Judge Allen Nielson signed MERS's Order Vacating Order of Default. On September 01, 2015 the Salmons filed a Motion for Discovery with a proposed Order. On September 30, 2015 Judge Allen C. Neilson signed MERS Order to Dismiss the case with Prejudice and denied the Salmon's Motion for Discovery. On October 13, 2015 Salmons filed a Motion to Recuse Judge Nielson. On October 27, 2015 Judge Neilson signed Salmon's Order Denying Motion for Recusal. On October 30, 2015 Salmons filed a Motion to Reconsider. At the November 17, 2015 hearing on Salmon's Motion to Reconsider, MERS failed appear for oral argument. Judge Neilson denied Salmon's Motion to Reconsider.

SUMMARY OF ARGUMENT

Judge Allen C. Neilson showed unfair bias in the way he addressed the Salmons' case:

1. When the Salmons submitted the Orders for Default on August 26, 2013 to the trial court (see CP at 40-42), the trial court should have addressed the Orders and motion's substance over form, because the affidavit of service was correct "an affidavit of service that is regular in form and substance is presumptively correct." **Lee v. Western Processing, Co,** 35 Wn. App. 466, 469, 667 P.2d 638 (1983). The Salmon's Motion. Affidavit, Orders and ex parte service fee required the trial court's action. Ignoring the Salmon's Orders caused confusion to the Salmons in knowing how to proceed, and left the legal door open for unnecessary future litigation expenses.

2. When referring to MERS registered agent (Robert Jacobsen) was a "fly-by-night scam artist"; but there was no evidence of wrong doing on Robert Jacobsen's behalf.
3. The trial court erased the Salmon's ex parte service with two orders filed and recorded online (see CP at 40-42), which caused damage to the Salmons from securing a timely remedy. Erasing the court record is a crime against the Salmons.
4. MERS's Order Vacating Order of Default was issued without providing clear and convincing evidence that the service of process was incorrect, (see CP at 19-20). MERS inappropriately used a California Case to mislead the court into believing the service of process was invalid, although Salmons found that the case was Dismissed with Prejudice and no wrong doing was found against MERS registered agent.
5. MERS had plenty of time to answer the Salmon's September 01, 2015 Motion for Discovery before the September 22, 2015 hearing, the Motion was wrongly denied.
6. The Salmon's CPA cause of action case should not have been Dismissed with Prejudice on September 22, 2015 because the Salmons could not have known MERS was a monopoly in 2010 and the elements to identity the claim of res judicata were

unsubstantiated and insufficient in all four categories: (1) subject matter; (2) cause of action; (3) persons and parties; and (4) the quality of the persons for or against whom the claim is made.

7. The trial court erred by not recusing Judge Neilson for unfair bias against the Salmons and MERS registered agent, Robert Jacobsen.
8. The trial court should have Granted the Salmon's Motion to Reconsider because:
    a. The CPA cause was not heard yet is foundationally different from the DOTA cause in the previous case.
    b. Of the preponderance of evidence showing that our Washington State agencies the Secretary of State and Department of Revenue records were correct in proving the legitimacy of the service of process.
    c. The doctrine of res judicata was misappropriated because the required elements were not met.
    d. The trial court showed unfair actions in inappropriately defending MERS and showing bias against the Salmons and Robert Jacobsen.
    e. Assignments of error 1-6 were not sufficiently addressed.

8. MERS actions are legally defined as a "Monopoly" pursuant Wash. **Const.** art. 12 § 22, and Wash. **Const.** art. 12 § 7 and Black Law Dictionary. MERS criminally controlled the assignments of the deeds of trust in purporting to be the notes legal 'beneficiary' and thereby controlling conveyances and therefore the sales of the real properties between associated non-interested parties, therein violating; Wash. **Const.** art. 12 § 22; Wash. **Const.** art. 12 § 7; **RCW** 19.86 *et al*; **RCW** 23B.15.010; **RCW** 82.04.067(1) (c) (iii).

ARGUMENT

1. Judge Ignores Affidavit of Service.

On several accounts the trial court shows bias against the Salmons' case:

On July 19, 2013 the Salmons provided proper service of process to MERS via Washington Secretary of State and filed the affidavit and declaration of service with the trial court on August 8, 2013, (see CP at 1-3). The court should have Granted the Salmons'

Order of Default, or at least in part, or modified the order to the courts liking. If the Salmons' document form needed some correction; **Picking v. Pennsylvania R. Co**. 151 Fed. 2nd 240; **Pucket v. Cox** 456 2nd 233. "Pro se pleadings are to be considered without regard to technicality; pro se litigants' pleadings are not to be held to the same high standards of perfection as lawyers." See also **Platsky v. C.I.A.** 953 F.2d. 25. "Additionally, pro se litigants are to be given reasonable opportunity to remedy the defects in their pleadings." **Reynoldson v. Shillinger** 907F .2d 124, 126 (10th Cir. 1990); See also **Jaxon v. Circle K. Corp**. 773 F.2d 1138, 1140 (10th Cir. 1985). The trial court did not specify what correction was needed. However the overwhelming evidence of service of process should allow for a default order pursuant **RCW** 7.16.120 (4), (5); **RCW** 34.05.570(1)(a); **CR** 52 (a)(1); **CR** 54 (c), **CR** 55 (b); "The person attacking the service to show by clear and convincing proof that the service was improper.", **McHugh v. Conner,** 68 Wn. 229, 231, 122 P. 1018 (1912); and because, "an affidavit of service that is regular in form and substance is presumptively correct", **Lee v. Western Processing, Co,** 35 Wn. App. 466, 469, 667 P.2d 638 (1983). "When a default judgment has been entered based upon an affidavit of service, the judgment

should be set aside only upon convincing evidence that the return of service was incorrect." **Allen v. Starr, 104 Wn. 246, 247, 176 P. 2 (1918).** "The party challenging the service has the burden of showing by clear and convincing evidence that the service was improper." **Leen v. Demopolis, 62 Wn. App. 473, 815 P. 2d 269.**

2. Judge shows unfair bias

At the hearing to vacate Judge Allen C. Neilson ardently defended MERS when he inappropriately focused his reasoning almost exclusively on the doctrine of res judicata by rehashing the Salmon's entire previous case history, of which he cited a 2011 case which MERS was not a party to. In this these previous cases, "res judicata" was inappropriately used as inferred reason to Vacate the Order of Default, see RP at 6 lines 5-25, RP at 7 lines 1-25. In this the Judge indicated obvious ignorance, or bias in his reasons to side with MERS in the hearing by these using previous cases to give the illusion of validity to MERS Motion to Vacate the Order of Default Judgment.

MERS ceased using the California Northern District Court Case No. 4:09-cv-03600 which MERS previously cited against their

registered agent when the Salmons found the California Northern District Court Case was dismissed with prejudice. The case carried no weight as evidence to prove improper service by Washington Secretary of State, in fact the California case could be used to argue that Robert Jacobsen qualifies as MERS registered agent in Washington because no wrong doing was found. The burden of demonstrating the invalidity of agency action is on the party asserting invalidity pursuant, **RCW** 34.05.570(1)(a), **CR** 52 (a)(1), **CR** 52 (d), and **CR** 59 (a)(7); (See RP at 6 lines 5-25, RP at 7 lines 1-25, CP at 4, 5, and CP at 23, 24).

Judge Allen C. Neilson again was bias when he personally attacked MERS registered agent Robert Jacobsen on the record referring to him as a "fly-by-night scam artist"(RP at 26 lines 24-25 RP at 39 lines 8-25). This bias shows reason for Judge Neilson's disregard of the Salmons' evidence that Robert Jacobsen was indeed MERS registered agent and is wrong pursuant **CJC** RULE 2.3 (B). MERS purports they never had a registered agent in Washington, but as it turns out Robert Jacobsen was not MERS only registered agent in Washington State. Before Robert Jacobsen served as MERS registered agent, INCORP SERVICES served as MERS registered agent. This fact indicates further evidence MERS had registered

agents in Washington, which was also presumptively ignored by the trial court (see RP at 4 lines 19-25; RP at 6 lines 5-7; RP at 46 lines 2-11).

Judge Neilson showed blatant bias or ignorance when he did not require MERS to provide any cognizable evidence to support their claim against the Secretary of State's proper service of process pursuant **RCW** 34.05.570(1) (a) "The burden of demonstrating the invalidity of agency action is on the party asserting invalidity"; (see RP at 26 lines 24-25; RP at 39 lines 17-25).

3. Trial Court Erased the Record Without Notice.

On August 26, 2015 Salmons submitted an ex parte service fee with two attached Default Orders to the trial court for judicial review (see CP at 40-42) because MERS was in default by failing to respond to the summons in a timely manner pursuant to **RCW** 25.05.536; **Lee v. Western Processing Co** 35 Wn. App. 466, 469, 667 P.2d 638 (1983), (assignment of error 5).

In this appeal the Salmons have resubmitted the ex parte service with its orders, as evidence in Salmon's Motion to Supplement Record (see CP at 40-42), because they were no longer found in

the trial courts record. The trial court erased the Salmons' ex parte service with attached orders and the Sub number. The trial court's action in this caused injury to public record and impeded, and injured the Salmon's ability to negotiate a fair and timely remedy pursuant **RCW** 40.16.020; **GR** 31(c)(4) "Court Record", (assignment of error 6).

The correspondence letter which Judge Neilson recalls as a "courtesy" was an inappropriate way to respond to the ex parte service with orders, (see RP at 28 lines 5-12, and RP at 41 lines 4-8). This "courtesy" letter filed September 26, 2013 by Judge Allen C. Nielson stated "...it is not clear to me if additional service is required." (see CP at 16). Judge Neilson was unaware or completely ignored the Salmon's ex parte Orders and inappropriately sent a response letter as a "courtesy" in lieu of addressing the ex parte orders. Furthermore, if the Judge was "unsure" about the service of process requirements, then the overwhelming legal constraints should have moved Judge Neilson to Grant the Salmons' original Default Orders at least in part because an affidavit of service that is regular in form and substance is presumptively correct. See **Lee v. Western Processing, Co**, 35 Wn. App. 466, 469, 667 P.2d 638 (1983), **CR** 54 (c), and **CR** 55 (b).

About a year later Salmons filed a second Motion for Default Judgment in the same form as the Salmons used originally in 2013, and with the same service of process (see CP at 1). The second time the Order of Default Judgment was Granted and signed in February 2015 by Judge Patrick Monasmith, (see CP at 17). This indicates that the original unsigned orders of default should have been in part serviceable court documents and granted at least partially a year earlier which caused damage to the Salmons from securing a timely remedy.

4. Default Vacated Without Evidence

When the trial court Granted MERS Order to Vacate the Order of Default (assignment of error-3), MERS failed produced clear and convincing evidence that the service was improper pursuant to, **CR** 59 (a) (7), **CR** 52 (d), **RCW** 25.05.536; "When a default judgment has been entered based upon an affidavit of service, the judgment should be set aside only upon convincing evidence that the return of service was incorrect." **Allen v. Starr**, 104 Wash. 246, 247, 176 P. 2 (1918); "The person attacking the service to show by clear and convincing proof that the service was improper." **McHugh v.**

Conner 68 Wash. 229, 231, 122 P. 1018 (1912) "The party challenging the service has the burden of showing by clear and convincing evidence that the service was improper." **Leen v. Demopolis** 62 Wn. App. 473, 815 P.2d 269, (see CP at 19).

DOR Records Prove Correct Service

The Washington State Department of Revenue records shows MERS the Delaware entity is the same entity as registered and recorded with Washington Secretary of State; both agency records show MERS with the same Uniform Business Identifier (UBI) number. The trial court ignored this evidence connecting Robert Jacobsen to MERS as their correct registered agent. Also MERS was doing business since June 3rd of 2009 through their other registered agent "INCORP SERVICES". INCORP SERVICES is a licensed business in the State of Washington to date. Robert Jacobsen became their second registered agent in the State of Washington per Secretary of State records proving that MERS had other registered agents, (see RP at 4 lines 9-25, RP at 5 lines 1-5, and RP at 46 lines 2-11).

5. **Discovery Denied Improperly**

Salmon's September 01, 2015 Order on Motion for Discovery should have been granted at the September 22, 2015 hearing because the two Washington State Agencies, Secretary of State, and the Department of Revenue's records indicate substantial evidence that MERS was served correctly, and the Department of Revenue records need to be reviewed through discovery to establish the facts regarding MERS denial of improper service.

MERS had enough time to respond to Salmons' Motion for Discovery. On September 01, 2015 the Salmons filed a Motion for Discovery with a proposed Order allowing MERS more than seven days to respond before the hearing with the requested evidence from the Department of Revenue to support their claims. At the September 22, 2015 hearing the Salmon's Motion for Discovery was inappropriately denied pursuant MERS hearsay, and ignoring the preponderance of evidence showing proper service.

MERS council excused the Salmons' Motion for Discovery stating "You know they're questioning who is the true MERS and they're getting confused...And then I also don't think discovery is appropriate anyway because the case should be dismissed." (see RP at 13 lines 22-25, thru RP at 14 lines 1-6).

MERS inappropriately refused discovery. However discovery would expose the true identity of the MERS, and whether the the same entity who filed with the Washington Department of Revenue is the same entity on record with the Secretary of State, further indicating if MERS was, or was not the true defendant/respondent served in this case, because they do have the same UBI numbers. The evidence is contrary to MERS claims and discovery would be the next logical step in finding the necessary facts. (See RP at 5 lines 6-12; RP at 46 lines 2-11).

The case which MERS referred to support their claim that Robert Jacobsen was not their Registered Agent has no jurisdictional bearing in this case and furthermore, the case was Dismissed with Prejudice by Judge Sandra Brown Armstrong, on 2/16/10 in the United States California Northern District Court Case No. 4:09-cv-03600 Document 82 filed on 02/16/10.

MERS alleges that the entity registered with the WA Secretary of State is a Washington entity (see RP at 3 lines 3-11) However the records indicate that MERS's Washington Secretary of State records do belong to MERS the "Delaware entity", (see RP at 16 lines 5-24). The connection between MERS's corporate records filed with the Washington Department of Revenue not only have the

same Washington UBI number as with their Washington Secretary of State records, but Department of Revenue lists MERS's correct principle place of business listed as 1818 Liberty St. Ste. 300 Reston, VA 20190-2680. This evidence further substantiates MERS was served correctly, (see RP at 5 lines 6-11). MERS did not fulfill the requirement to provide evidence of their claims of non-service especially in opposition to Washington State agencies records pursuant; **RCW** 34.05.570(1)(a); **CR** 52 (a)(1); **CR** 59 (a)(7); **RCW** 7.16.120(4), (5); **Leen v. Demopolis**, 62 Wn. App. 473, 815 P. 2d 269 (1991).

There was no evidence showing any illegal or wrong doing against Robert Jacobson in this California case, and the California court's rulings would not have jurisdictional venue in Washington State regarding this matter pursuant **RCW** 7.16.120(1), (4), and (5), (see RP at 22 lines 7-21 and RP at 23 lines 17-22).

MERS states "It is not our burden of proof to prove that service was effected on us but we did, we did have an affidavit or declaration from an agent of MERS confirming that MERS was never served with process in this action." (see RP at 25 lines 1-3). Here MERS inappropriately asserts it is not their burden of proof. However, the burden of proof is required in Vacating an Order of Default pursuant

RCW 34.05.570(1) (a). "The burden of demonstrating the invalidity of agency action is on the party." **Allen v. Starr**, 104 Wash. 246, 247, 176 P. 2 (1918); **McHugh v. Conner**, 68 Wash. 229, 231, 122 P. 1018 (1912); **Leen v. Demopolis**, 62 Wn. App. 473, 815 P.2d 269. Furthermore, MERS alleged "affidavit" was not produced for the record and the Salmons have never witnessed it. The records from Washington State Agencies the Salmons exhibited as evidence would nullify an opposing affidavit from a MERS agent and is not sufficient as evidence to prove they were not properly served with process even if it were presented for the record.

6. Case Dismissed Without the Elements of Res Judicata

The Salmon's CPA cause of action was inappropriately Dismissed with Prejudice on September 22, 2015, pursuant res judicata. On July 21, 2016 MERS argues "Your Honor, and it's in our brief, res judicata applies not only to claims actually brought but also to claims that should have been brought." (RP at 15 lines 2-9). MERS inappropriately used **Kelly-Hansen v. Kelly-Hansen, 941 P. 2d 1108 - Wash**: Court of Appeals, 2nd Div. (1997). Judge Allen C. Nielson stated, "what I'm getting at there is there's now a

contention that this – there's a violation of the Consumer Protection Act and that claim should still survive." (See RP at 14 lines 11-12). MERS council then stated "So the wrongs are the same and it would have to be one of those wrongs, or a wrong that would be a violation of the Consumer Protection Act and that could have been filed at the outset along with the original complaint." (See RP at 15 line 3-4). Judge Allen C. Nielson states, "Well and I have **Kelly-Hansen v Kelly Hansen**." (See RP at 15 line 10). Upon review of the **Kelly-Hansen v Kelly Hansen** case, the Salmons found that this case also states "In general, one cannot say that a matter should have been litigated earlier if, for some reason, it could not have been litigated earlier; 31 thus, res judicata will not operate if a necessary fact was not in existence at the time of the prior proceeding,32 or if evidence needed to establish a necessary fact would not have been admissible in the prior proceeding.33 Similarly, one cannot say that a matter should have been litigated earlier if, even though it could have been litigated earlier, there were valid reasons for not asserting it earlier; thus, res judicata may not operate if the matter was an independent claim not required to be joined," See **Kelly-Hansen v. Kelly-Hansen, 941 P. 2d 1108 - Wash**: Court of Appeals, 2nd Div. (1997)

The CPA cause could not have been litigated earlier because in 2010 the few in the legal community understood the scope of MERS illegal acts outlined in **RCW** 19.86 *et al*, therefore because of the obscure arcane nature of MERS operations, the Salmons were unable to litigate a CPA case earlier regarding MERS unfair business practices and regarding their monopoly in the mortgage assignment business in Washington State. Res judicata therefore should not apply; (see CP at 24, 25).

MERS claim of res judicata is further inadequate because "a cause of action raised in a current adjudicatory proceeding is not identical to a cause of action raised in the prior adjudicatory proceeding because, (1) prosecution of the action in the current proceeding would not impair the rights established in the earlier proceeding, (2) the evidence in both actions is substantially the same, (3) infringement of the same right is alleged in both actions, and (4) the actions arise out of the same nucleus of facts"; **Civil Serv Comm'n. v. City Of Kelso**, 137 Wn.2d 166, (1999).

Furthermore, the elements of res judicata doctrine MERS presented were insufficient in all four categories; The doctrine of res judicata does not bar the later of two actions unless between the two actions there is an identity of: (1) subject matter, (2) cause

of action, (3) persons and parties, and (4) the quality of the persons for or against whom the claim is made. **LOVERIDGE v. FRED MEYER, INC.**, 125 Wn.2d 759, (Jan. 1995**):**

(1)SUBJECT MATTER; is foundationally different between the lawsuits MERS alleges to apply. The other case MERS referred to. The Salmons' 2010 DOTA suit was about the right to collect payments, and/or foreclose before an assignment was properly filed at the county by an interested party pursuant **RCW** 61.24 *et al*, or the 'DOTA' cause.

The current CPA case is about MERS's unfair and unsafe business practices specifically regarding their monopolized control of assigning the deeds of trust, thereby inappropriately effecting the people's property interests on millions of mortgages, and conducting hundreds of thousands, or millions of these assignment transactions in our State without proper licensing or a Washington State Business License pursuant the CPA cause in **RCW** 19.86 *et al*; **RCW** 82.04.067(1) (c) (iii); **RCW** 18.44.021. In truth the DOTA cause is not the reason for this CPA action therefore res judicata should not apply;

(2) CAUSE; The Salmons' previous 2010 cause of action was to stop Bank of America's illegal foreclosure proceedings. Bank of

America's claimed position as beneficiary wherein they were initiating an illegal foreclosure action also evidenced in their letter which Bank of America's Steven Tome admitted in paragraph four that FNMA is the beneficiary, whereas this current cause of action is not a "foreclosure" case, or pursuant the DOTA cause in **RCW** 24.61 *et al.* However, this current cause of action is about MERS's unfair, damaging, and illegal position in the State of Washington by operating as a monopoly controlling the majority of home loans at least until 2008 through the deed of trust, and usurping the duties of a "beneficiary" and inappropriately affecting the chain of title making it nearly impossible to discern who the parties in interest are.

(3) PERSONS AND PARTIES; MERS did not return service of process for the Salmons' first DOTA case in 2010. In 2010 Lane Powell PC law firm did not enter a proper appearance for the representation of MERS. In Salmons' second Quiet Title case MERS was not a party in any form. The Salmons' 2011 Quiet Title Action was exclusively against Bank of America, *et al* and not identical to the first 2010 DOTA cause.

The Salmons did not have a claim against MERS in the 2010 DOTA cause. The original 2010 case was improperly removed to federal court for lack of jurisdiction over the subject matter pursuant

CR 12 (b) (1)? The Salmons sought an actionable cause specifically spelled out in the Salmons' 2010 case No. 10-2-00596-8 against Recontrust, Bank of America, pursuant DOTA-**RCW** 61.24 *et al.* In this case the jurisdiction over the Salmons' property is the subject matter of the case pursuant **RCW** 4.12.010 as outlined in the pleading under the heading "Jurisdiction and Venue". Therefore actions for the Salmons' cause should have been commenced in the county in which the subject of the action, or some part thereof, is situated pursuant **RCW** 4.12.010. The case was removed improperly pursuant 28 U.S. Code § 1332 Diversity of Citizenship. Furthermore the only defendant who responded to the summons was ReconTrust Company, N.A. MERS did not respond to the summons. MERS did not enter a proper written appearance for MERS to be regarded as a party in the case. Furthermore, the 2010 case was dismissed in federal court and there was no Final Judgment on the merits in the original litigation as required for the purpose of res judicata to prevail in this case.

MERS was not a party to the Salmons' second Quiet Title case the trial court refers to (see RP at 6 lines 20-21). MERS council also inappropriately refers to this case in order to apply the res judicata doctrine (see RP at 13 lines 1-10). The trial court and MERS

inappropriately applied the Salmons' second case No. 11-2-00426-9 for reasons of res judicata.

(4) THE QUALITY OF THE PERSONS FOR OR AGAINST WHOM THE CLAIM IS MADE; MERS has shown they are illegal and criminal in aspects of conducting themselves in business while engaging in unsafe and unfair practices including but not limited to: Using agents who falsely notarize a document and claim to be corporate officers in order to execute deeds of trust assignments, or (robo-signing);

¶ 42 Quality suggests these falsely notarized documents are immaterial because the owner received the minimum notice required by law. This no-harm, no-foul argument again reveals a misunderstanding of Washington law and the purpose and importance of the notary's acknowledgment under the law. A signed notarization is the ultimate assurance upon which the whole world is entitled to rely that the proper person signed a document on the stated day and place. Local, interstate, and international transactions involving individuals, banks, and corporations proceed smoothly because all may rely upon the sanctity of the notary's seal. This court does not take lightly the importance of a notary's obligation to verify the signor's identity and the date of signing by

having the signature performed in the notary's presence. **Werner v. Werner**, 84 Wash.2d 360, 526 P.2d 370 (1974). As amicus Washington State Bar Association notes, "The proper functioning of the legal system depends on the honesty of notaries who are entrusted to verify the signing of legally significant documents." Amicus Br. of WSBA at 1. While the legislature has not yet declared that it is a per se unfair or deceptive act for the purposes of the CPA, it is a crime in both Washington and California for a notary to falsely notarize a document.

MERS illegally executed deed of trust assignments as a non-beneficiary.

MERS denies registering with the Washington Secretary of State when evidence proves otherwise; MERS has no authority to conduct business in Washington because MERS claims the Washington entity recorded with Secretary of State isn't the correct Delaware MERS entity therefore MERS is not authorized to transact business in Washington pursuant; **RCW** 23B.15.010 "Authority to transact business required."

License is required for the amount of business MERS engaged in, yet there is no business license with MERS's name in the State of Washington; **RCW** 82.04.067(1) (c) Substantial nexus—Engaging

in business, (iii) More than two hundred fifty thousand dollars of receipts from this state;

The Salmons' argue that for these reasons MERS overwhelmingly fails to meet the criteria to substantiate their claim of res judicata.

7. The Trial Court Failed to Reconsider

The Salmons argued that MERS was in violation of the Consumer Protection Act, specifically as it relates to **Wash. Const. art. 12 § 22.** MERS did not object because they did not appear. However Judge Allen C. Neilson ruled in favor of the absent party. The Consumer Protection Act was not heard in this case at any time and was improperly ignored in all this case's hearings, (see CP at 37-039).

CONCLUSION

The Salmons are hereby serving a copy of this brief on the Washington Attorney General pursuant **RCW** 19.86.095. The Salmons are seeking injunctive relief with treble damages pursuant **RCW** 19.86.090, *et al*, for the following:

1. The Salmons claim injunctive relief and treble damages for MERS violations of Washington RCWs and CPA violations as outlined in this brief; thereby causing damages to the Salmons, and requiring the Salmons to take defensive action against MERS.
2. The Salmons claim relief from MERS's inappropriate Order Vacating the Order of Default.
    a. Relief is sought by reversing MERS's Order Vacating the Order of Default.
    b. Claim for relief is also sought in the form of treble damages for compensation of the required time and costs needed for the Salmons to defend from MERS resulting motions, orders, and supportive documents in the subsequent court proceedings.
3. The Salmons request relief from the trial court denying Salmon's September 01, 2015 Motion for Discovery in the September 22, 2015 hearing.
    a. Claim for relief is sought in Granting the Salmons' Order for Discovery.
    b. Claim for relief is also sought in compensation for the time, and costs of subsequent court proceedings if the

discovery evidence proves MERS was correctly served the service of process by the Washington Secretary of State agency.

c. Discovery is also sought to investigate whether MERS conducted business legally, and if MERS is required to carry valid Washington State licensing for conducting business in volume and quality outlined in the brief Discovery heading number 5.

a. Claim for relief is also sought in the form of treble damages for compensation of the required time and costs needed for the Salmons to defend from MERS resulting motions, orders, and supportive documents in the subsequent court proceedings.

4. The Salmons request relief from the trial court error in granting MERS's Order to Dismiss Salmon's CPA cause of action with Prejudice pursuant res judicata.

a. Claim for relief is sought in reversing MERS Order to Dismiss, and MERS subsequent Judgment awarded.

b. Claim for relief is also sought in the form of treble damages for compensation of the required time and costs needed for the Salmons to defend from MERS

resulting motions, orders, and supportive documents in the subsequent court proceedings.

5. The Salmons claim Injunctive relief for the damages the trial court caused by erasing the Salmon's ex parte orders recorded online, on August, 26, 2013 pursuant to **RCW** 40.16.020.
    a. Injunctive claim for relief is hereby requested in the Granting the Salmon's August 26, 2013 erased Orders filed in the 2013 Salmons original Motion for Default.
    b. Claim for relief is also sought in Granting added monetary compensation for the time, cost and emotional strain required to defend from the subsequent proceedings filed by MERS for two plus years after a default order should have been issued.
    c. Relief is sought in ordering the trial court recompense the Salmons for damages incurred from inhibiting the Salmons from securing a timely remedy.
    d. Also claim for relief is sought in ordering an investigation into finding the person(s) who caused the record to be erased in order to minimize and discourage such damages to others in the future pursuant **RCW** 40.16.020.

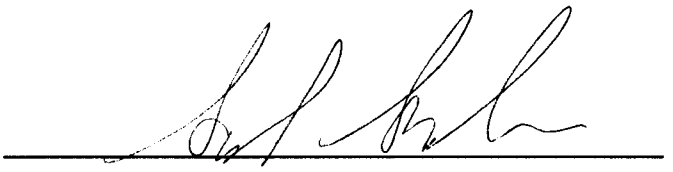
FINAL STATEMENT

Salmons' intent in filing this CPA grievance against MERS as outlined in this brief further afforded by the Washington Supreme Court decision in **Bain v. Metro. Mortg. Grp., Inc.,** 175 Wn.2d 83 (2012), was so the case could be heard on its merits by a competent and unbiased Judge in order that truth and justice may prevail for the people hurt by MERS monopoly pursuant to: **RCW** 19.86 *et al*; **RCW** 82.04.067(1) (c) (iii); **RCW** 23B.15.010; Wash. **Const.** art. 12 § 7; Wash. **Const.** art. 12 § 22; **Maty v. Grasselli Chemical Co**., 303 U.S. 197 (1938); **Sims v. Aherns**, 271 SW 720 (1925). Title 42 U.S.C. Sec. 1983, **Wood v. Breier**, 54 F.R.D. 7, 10-11 (E.D. Wis. 1972). **Frankenhauser v. Rizzo**, 59 F.R.D. 339 (E.D. Pa. 1973). "Each citizen acts as a private attorney general who 'takes on the mantel of sovereign', Salmons have met the 5 elements to prevail on a CPA action, "(1) unfair or deceptive act or practice; (2) occurring in trade or commerce; (3) public interest impact; (4) injury to plaintiff in his or her business or

property; (5) causation." **Hangman Ridge Training Stables, Inc. v. Safeco Title Ins. Co.**, 105 Wn.2d 778, 780, 719 P.2d 531 (1986).

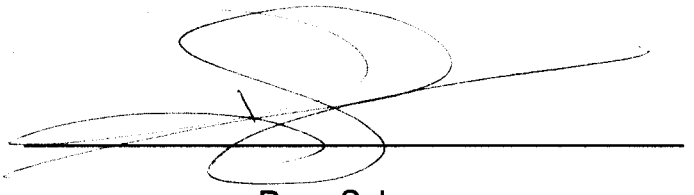
Respectfully submitted,

Monday, June 06, 2016



Samuel Salmon

Pro Se litigant for *SAMUEL SALMON,*



Roxy Salmon

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COURT OF APPEALS DIVISION III OF THE STATE OF WASHINGTON

Samuel and Roxy Salmon , Plaintiff, vs. MORTGAGE ELECTRONIC REGISTRATION SERVICES, INC., Defendant	Appeal Case No.: 339386 Certificate of Service

Certificate of Service

I, Samuel Salmon certify that on Tuesday, June 07, 2016, I caused a true and correct copy of the attached Appellants' Brief to be served on the following parties including the Washington State Attorney General pursuant RCW 19.86.095. Service is provided in the manner indicated below:

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