

No. 74705-3-1

IN THE COURT OF APPEALS, DIVISION ONE  
OF THE STATE OF WASHINGTON

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JOHN R and JACQUELINE WILSON, a married couple,  
Appellant,

v.

QUALITY LOAN SERVICE CORP OF WASHINGTON, a Washington  
State Corporation, and  
MCCARTHY and HOLTHUS, LLP, a California State Limited  
Liability Partnership

Respondents

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APPELLANTS OPENING BRIEF

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## **I. INTRODUCTION**

### ***Summary Judgment Motion (SJM) Improper***

In this appeal, the Wilsons seek reversal of the Snohomish County Superior Court order granting summary judgment to defendants Quality Loan Service Corp of Washington (QLSCW) and McCarthy and Holthus LLP (M&H). The Wilsons claim defendants executed two unlawful foreclosures against their homestead from late 2012 to mid 2014 in violation of RCW 61.24 Deed of Trust Act (DTA) and violated RPC 5.7 [CP 558-562] that harmed Wilsons in violation of RCW 19.86 Consumer Protection Act (CPA). Defendants pressured the lower court into ignoring multiple DTA violations and genuine issues of material fact in evidence, which block any entitlement to summary judgment [CP 55:20-22, 56:9-12]. Instead, the lower court granted summary judgment on the false notion that, in the judge's words, "this case turns on Brown" note holder/owner issues (*Brown v. Commerce*) which mistakenly is not relevant. The ruling, if allowed to stand, violates legislature intent, harms homeowners, and promotes future trustee misconduct against citizens. As further explained herein, the court erred in eight or more ways:

**(1)** granting judgment despite many genuine issues of material fact that block summary judgment as a matter of law [CR 56(c) and (e); CP 306-307; CP 308].

**(2)** overlooking many DTA RCW and RPC violations [CP 557-565; CP 308-315; CP 316:1-2; Exhibit 7].

- (3)** overlooking a host of non-neutral QLSCW/M&H operations/structure against RCW 61.24.010(4), RPC 5.7 [CP 557-565], and earlier court finding of non-neutral “*prima facie* evidence of co-mingling...” [CP 545:20-21; CP 311-313;].
- (4)** asserting “This case turns on *Brown v. Commerce*” which is not true as herein clarified;
- (5)** overlooking defendants forgery to coverup the QLSCW self-damaging 10-6-15 declaration [CP 192:8-10] (Sierra West) violating RPCs [CP 191-193] in the first SJM served to Wilsons on 10-9-15 just-in-time for the 28 day deadline for a 11-6-15 hearing [CR56]. The QLSCW declaration supported Wilsons and countered defendant claims [CP 192:6-10] and proved QLSCW had not received Chase Declaration Of Ownership until 11-3-15 —over six weeks after QLSCW had filed the Wilsons Notice Of Default. Sanctionable acts and court maneuverings should by itself bar summary judgment and bar all Sierra West declarations as misleading/unreliable.
- (6)** overlooking defendants use of its 10-9-15 SJM to preemptively block Wilsons already in-process discovery [558:4-9] (interrogatory and deposition) before end of their 2014 moratorium to restart litigation only after finalized Jackson v QLSCW.
- (7)** allowed false Wilson maligning (“inconsistent”) to dismiss his truthful declaration.
- (8)** ignored CPA-qualified harm caused by defendants RCW violations without credible controverting argument.

**Bottomline:** (1) *Did defendants violate RCWs and if so, does CPA apply?* and  
(2) *Did genuine issues of material fact exist to block summary judgment?*

## II. TABLE OF AUTHORITIES

### WASHINGTON STATE CASES

*Albice v. Premier Mortg. Servs. of Wash.*, 174 Wn.2d 560, 567, 276 P.3d 1277 (2012);

*Bain v. Metro. Mortg. Grp. Inc.*, 285 P.3d 34, 49-50 (Wash. 2012); *Bain v. Metro Mortgage*

*Bank, Co.*, Washington State Supreme Court No. 86206-1

*Balise v. Underwood*, 62 Wn.2d 195, 200, 381 P.2d 966 (1963)

*Bavand v. OneWest Bank, F.S.B.*, 176 Wash. App. 475, 483, 486-88, 490, 309 P.3d 636, 642

(2013)

*Burton v. Lehman*, 153 Wash.2d 416, 422, 103 P.3d 1230 (2005).

*Casper v. Esteb Enters., Inc.*, 119 Wash. App. At 776-770

*Cox v. Helenius*, 693 P.2d 683, 686-687 (Wash. 1985).

*Department of Ecology v. Campbell & Gwinn*, 146 Wash.2d 1, 24, 43 P.3d 4 (2002)

*Daviscourt v. QLSCW*, King County Superior Court Cause No. 14-2-19520-6 SEA

*Flower v. T.R.A. Indus., Inc.*, 127 Wash. App. 13, 38-39, 111 P.3d 1192 (2005)

*Frias v. Asset Foreclosure Servs., Inc.*, 181 Wn.2d 412, 430-31, 334, P.3d 529, 537 (2014)

*Hangman Ridge Training Stables, Inc. v. Safeco Title Ins. Co.*, 105 Wn.2d 778, 780, 783, 719

P.2d 531 (1986)

*Keck v. Collins*, No. 90357-3, 2015 WL 5612829 (Sept. 24, 2015)

*Kent v. White Med. Ctr., Inc., P.S.*, 61 Wn. App. 163, 168, 810 P.2d 4 (Div. I, 1991).

*Klem v. Wash. Mutual Bank*, 176 Wn.2d 771, 782, 790, 295 P.3d 1179 (2013)

*La Plante v. State*, 85 Wn.2d 154, 158, 531 P.2d 299 (1975)

*Lyons v. U.S. Bank National Ass'n*, 181 Wash.2d 775, 784, 787-88, 336 P.3d 1142, 1147, 1149 (2014)

*Lybbert v. Grant County*, 141 Wn.2d 29, 34, 1 P.3d 1124 (2000).

*Marker v. Union Fid. Life Ins. Co.*, 125 F.R.D. 121, 126 (M.D.N.C. 1989)

*Mazon v. Krafchick*, 158 Wash.2d 440, 448-49, 144 P.3d 1168 (2006)

*Panag v. Farmers Ins. Co. of Wn.*, 166 Wn.2d 27, 48, 55-56, 204 P.3d 885 (2009)

*Peyton Bldg., LLC v. Niko's Gourmet, Inc.*, 180 Wn. App. 674, 323 P.3d 629 (2014)

*Preston v. Duncan*, 55 Wn.2d 678, 683, 349 P.2d 605 (1960)

*Rucker v. Novastar Mortgage, Inc.*, 177 Wash. App. 1, 14, 311 P.3d 31, 37-38 (2013)

*Schnall v. AT&T Wireless Servs., Inc.*, 171 Wn.2d 260, 277-78, 279, 259 P.3d 129 (2011)

*Schnall v. Deutsche Bank Nat'l Trust Company*, Appeals Court Division One, Unpublished Opinion, Court Case No. 73522-5-1, (June 2016)

*Schroeder v. Excelsior Mgmt. Grp., LLC*, 177 Wn.2d 102 note 3, 2013 WL 791863 (Wash. Feb, 28, 2013)

*Sleasman v. City of Lacey*, 159 Wash.2d 639, 151 P.3d 990 (2007)

*State v. Hahn*, 83 Wash.App. 825, 832, 924 P.2d 392 (1996)

*State v. Kaiser*, 161 Wn. App. 705, 719, 254 P.3d 850 (Div. I, 2010)

*State v. Schwab*, 103 Wn.2d 542, 558, 693 P.2d 108 (1985)

*State of Washington v. Quality Loan Service Corporation of Washington*, King County Superior

Court Cause No. 14-2-06236-2 SEA, ¶¶ 6.1-6.32); Ex. 2 (2015)

*Sutton v. Tacoma Sch. Dist.* No. 10, 180 Wn. App. 859, 866-68, 871, 324 P.3d 763, 766-68  
(2014)

*Tingey v. Haisch*, 159 Wash.2d 652, 657, 152 P.3d 1020, 1023 (2007).

*Trimble v. Wash. State Univ.*, 140 Wn.2d 88, 93, 993 P.2d 259 (2000).

*Trujillo v. Nw. Tr. Servs., Inc.*, 183 Wash.2d 820, 355 P.3d 1100, 1105-07, 1108-09 (2015)

*Walker v. Quality Loan Serv. Corp.*, 176 Wash. App. 294, 305-06, 308 P.3d 716, 720-21 (2013)

*Weber v. State*, 457 A.2d 674, 679 n.6 (Del. 1983) ← **DELAWARE CASE**

*Whitaker v. Coleman*, 115 F.2d 305, 307 (5<sup>th</sup> Cir. 1940)

*Wilsons v. Quality Loan Service Corp of Washington and McCarthy Holthus LLP*, Snohomish  
County Superior Court No. 13-2-05323-1 Dkt. 21

*Young v. Key Pharm., Inc.*, 112 Wn.2d 216, 225, 770 P.2d 182 (1989)

### **FEDERAL CASES**

*Ayala v. Federal Nat'l Mortg. Assoc.*, Case No. C13-285RA, United States Dist Court, W.D.  
Washington, Seattle (Sept 17, 2013)

*Douglas v. Recontrust Company, Nat'l Assoc.*, Case No. C11-1475RA, United States Dist Court,  
W.D. Washington, Seattle (Nov 9, 2012)

*Singh v. Fed Nat'l Mortg. Assoc.*, United States Dist Court, W.D. Washington, Seattle (Feb 7,  
2014)

**CONSTITUTIONAL ISSUE**

14<sup>th</sup> Amendment Due Process

**STATUTES**

RCW 19.86 Consumer Protection Act

RCW 19.86.020

RCW 19.86.093(2)

RCW 19.86.920 Legislative purpose to comport with federal CPA

RCW 61.24 Deeds of Trust Act

RCW 61.24.005(2) Beneficiary definition

RCW 61.24.010(2) Trustee power vests *after* county recorded appointment

RCW 61.24.010(4) ...duty of good faith toward borrower and lender

RCW 61.24.020 Beneficiary must be recorded, identified, indexed

RCW 61.24.030 Requisites to Trustee Sale

RCW 61.24.030(6) Requisite continuous address, phone, physical presence

RCW 61.24.030(7)(a) Beneficiary proof before recording NOTS

RCW 61.24.030(7)(b) Beneficiary declaration not enough w/o good faith

RCW 61.24.040 Trustee notice of sale rules

RCW 61.24.040(1)(f)IX Trustee ID on notice of trustee sale notices

RCW 19.86.090 Civil action for damages—Treble damages authorized

**COURT RULES**

CR 30(b)(6)

CR 56 Summary judgment court rules

CR 56(e)

CR 56(f) Court's power to order a continuance for further needed discovery

CR 56(c) SJM Timing requirements; must disprove genuine material fact

ER 103(a) & ER 103(b)

### **RULES OF PROFESSIONAL CONDUCT**

RPC 1.8 cmt 17

RPC 5.7

### **OTHER AUTHORITIES**

Laws of 2008, Ch. 108, § 22

David A. Leen, *Wrongful Foreclosures in Washington*, 49:2 Gonzaga Law Review 331, 336-38,  
(2014)

David A. Leen, *Due Process and Deeds of Trust—Strange Bedfellows?* 48 Wash. Law Rev. 763,  
766-767 (1973)

John Campbell, *Can We Trust Trustees? Proposals for Reducing Wrongful Foreclosures*, 63  
Cath. U. L. Rev. 103 (2014)

Trustee; Deed of Trust; Client Conflict, 926 Op. WSBA at 3 (1987).

Wilson, SH (Ed.). *The Civil Justice System and Civil Procedure in the United States*, In: U.S.  
Justice System—An Encyclopedia. ABC-CLIO, Santa Barbara: pg 244, (2012).

### III. ASSIGNMENTS OF ERROR AND ISSUES

**ERROR NO. 1: Summary judgment must be denied as a matter of law [CR 56] since genuine material facts on essential elements are clear. [CP618-688, CP 553-607, CP 296-321]**

**Issue #1:** Whether genuine issues of material fact re DTA, RPC and CR violations require the court to deny summary judgment or reverse in Wilsons favor?<sup>1</sup>

**Issue #2:** Whether the court must presume as ‘true’ all facts in evidence that were not *specifically* discredited? [CP 563]

**Issue #3:** Whether “inconsistent” on note #7 in 1-14-16 summary judgment order should be struck as untrue since his declaration is witnessed and is true?<sup>2</sup> [Exhibit 3]

**ERROR NO. 2: The court overlooked defendants DTA violations in foreclosure attempts (late 2012 to mid-2014). Shouting, “But we stopped the sales!” are not relevant.**

**Issue #4:** Whether defendants violated good faith RCW 61.24.010(2) duty to Wilsons by ignoring 2012 county records showing Chase was not empowered to appoint a successor trustee on Wilsons deed of trust? [see Bavand and Schnell]

**Issue #5:** Whether defendants violated RCW 61.24.030(6) requiring trustee *continuous* physical presence and phone access (from NOTS to auction) when QLSCW was inaccessible at addresses during QLSCW foreclose attempt #2?

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<sup>1</sup> Steven H. Wilson, p.244 In: The U.S. Justice System – An Encyclopedia (2012)

<sup>2</sup> Number 7 of Judge Dingley order reads: “Declaration of John R. Wilson...was inconsistent with his testimony in the deposition”

**Issue #6:** Whether defendants were obligated to further investigate beneficiary chain-of-title legitimacy (beyond beneficiary declaration) due RCW 61.24.010(4) & 61.24.030(7)(b) neutrality violations toward Wilsons?

**ERROR NO. 3:** The court ignored a host of non neutral operations by defendants working together against Wilsons—including *prima facie* evidence of co-mingling.

**Issue #7:** Whether defendants violated RCW 61.24.010(4) trustee duty of good faith to Wilsons in the **AGGREGATE** of listed facts herein?

**Issue #8:** Whether defendants violated RCWs 61.24.020 and 010(4) duty of good faith and neutrality requirements by ignoring the 2012 absence of required beneficiary evidence in Snohomish County records?

**Issue #9:** Whether QLSCW as RCW 61.24.010(4) violator can fulfill chain-of-title confirmation requirements beyond a beneficiary declaration by only looking at the impersonal LPS computer screen without further review?

**Issue #10:** Whether the court can ignore *prima facie* evidence of defendants co-mingling in violation of RCWs and *Klem v WashMutual/QLSCW*?

**Issue #11:** Whether Wilsons must trust QLSCW in a **third** foreclosure attempt after QLSCW has executed back-to-back attempts against RCWs?

**ERROR No. 4:** The court wrongly asserted final rationale for summary judgment “turned on *Brown v. Dept of Commerce*” note holder/owner.

**Issue #12:** Whether existence of note holder/owner allows a trustee to violate required RCW process steps in a nonjudicial foreclosure?

**ERROR NO. 5: The court overlooked defendant coverup deception including evidence manipulations and forgery vs an unaware ProSe plaintiff (Wilson).**

**Issue #13:** Whether coverup deception by defendants is unethical, and, if so, whether such deception bars favorable judgment?

**ERROR NO. 6: The court allowed defendants to violate a moratorium and good faith that unfairly blocked Wilsons in-process discovery.**

**Issue #14:** Whether defendants can block already in-process discovery that was temporarily put on hold in good faith until the moratorium end?

**ERROR NO. 7: The court allowed defendants to falsely malign Wilsons integrity without evidence that caused false inferences written on the 1-14-16 judgment order note #7.**

**Issue #15:** Whether defendant attorney is allowed to falsely malign and infer Wilson lying in his declaration to falsely impeach his testimony?

**ERROR NO. 8: Incorrect judgment left CPA arguments undecided.**

**Issue #16:** Whether defendants can violate DTA foreclosure processes that cause Wilson losses, but avoid CPA claims by temporary stopping foreclosure before litigation start, falsely claim 'no loss,' or direct focus on irrelevant Brown.

#### **IV. STATEMENT OF CASE**      *CPA applies to RCW/RPC violations*

The Wilsons, via attorney Mr. Trumbull, filed a 6-4-13 complaint against QLSCW and M&H for declaratory relief, injunctive relief, and CPA violations, claiming DTA/RCW violations and non-neutral actions. QLSCW and M&H, both under M&H attorney J. McIntosh, denied wrongdoing and filed for summary judgment to dismiss where arguments were heard on

7-11-13. Judge Okrent denied the motion, “Based on fiduciary duty discussed in *Klem v. Wash Mutual* there is evidence of a *prima facie* case of commingling of activities” [CP 285].

Thus, QLSCW switched its attorney from M&H’s Mr. McIntosh to Ms. Salyer at Tomasi Salyer Baroway in Oregon. Mr. McIntosh continued to represent his firm M&H. Meanwhile, because Ms. Salyer was very busy and new to the case with steep learning curve, Trumbull and Salyer agreed to a moratorium to allow onboarding time for new substitute Ms. Salyer, and to delay overdue QLSCW-M&H answers to Wilsons’ 3-10-14 interrogatory and also delay the Wilsons’ planned ‘do-over’ 30(b)(6) deposition [do-over for a sanctionably unprepared Defendant’s 30(b)(6) witness]. By agreement, both sides agreed to await the final *Jackson v QLSCW* decision—a very different case, but involving an element of interest to both Wilsons and defendants. [Note: defendants now falsely argue *Jackson* is *the same as Wilson*]. Meanwhile, Trumbull’s law firm dissolved in summer 2015. In good faith, the now ProSe Wilsons honored the moratorium and did not request defendants’ late and unanswered 3-10-2014 interrogatory or ‘do-over’ 30(6)(b) deposition planned for after *Jackson* was final. Ms. Salyer, however, elected to ignore the moratorium and preemptively served a surprise SJM against Wilsons on 10-9-2015 (for an 11-6-2015 hearing *exactly* meeting the 28 day minimum. Wilsons thus reasonably assumed filing also on 10-9-2015 (which ultimately was four weeks before *Jackson* was final on 11-4-15. Wilsons felt betrayed and preempted by the SJM maneuver to deny Wilsons’ in-process interrogatory and do-over deposition.

On or about 10-16-15, Wilson called Ms. Salyer who urged Wilson to immediately withdraw due to: his 'losing case,' new Brown vs Commerce decision, the purported "inept/sanctioned lawfirm that misled you," and QLSCW's plan to seek financial damages (a threat) if "you take the case further." Wilson asked for time to get legal advice which led to Wilson's 10-21-2015 request for at least 8 weeks continuance to seek pro bono legal help and, in worst case, ProSe learning curve/prep.' QLSCW offered two weeks but settled on eight. With trust broken by the preemptive maneuver, Wilsons found a pro bono lawyer Mr. Stafne in the 11<sup>th</sup> hour (late November 2015) who hastily filed a response in time to avoid default judgment. To justify early summary judgment to block Wilsons discovery, Ms. Salyer stated, "finalization of Jackson did not include a reconsideration motion."

At the re-scheduled 1-14-16 hearing, Ms. Salyer focused largely on the note and Brown v Dept of Commerce note holder/owner issues. This led to counterargument discussions about the note which consumed the lion's share of courtroom discussion. In the end, Judge Dingley agreed with defendants stating, "This case turns on (application of) Brown and therefore I'm going to grant both defendants summary judgment."

Among other issues, Wilsons now ask the court to: (1) reverse summary judgment based on genuine issues of material fact involving DTA violations block summary judgment (*or even reverse in Wilsons favor*) as a matter of law, and justify CPA claims at trial, and/or (2) remand the case back to superior court while also directing that fair, due process discovery by

Wilson's be completed (with do-over 30(b)(6) deposition costs billed to defendants who did not cooperate) to ensure all items "on the table" before trial & fair evaluation.

## ARGUMENT

**Background Concepts.** Judicial foreclosure was the only mortgage foreclosure method in the U.S. until several decades ago when nonjudicial became an *optional second* method in half of states, including Washington (RCW 61.24). The nonjudicial method became popular due to its faster, low cost financial incentives that yield higher profits for lenders. Our courts call nonjudicial foreclosure an "*incredible power of sale*" (*Frias v. Asset Foreclosure Servs., Inc.*, 181 Wn.2d 412, 430-31, 334, P.3d 529, 537 (2014); *Klem v. Wash. Mutual Bank*, 176 Wn.2d 771, 782, 790, 295 P.3d 1179 (2013); *Bain v. Metro. Mortg. Grp. Inc.*, 285 P.3d 34, 49-50 (Wash. 2012) et al that comes at the price of neutral trustees who must carry out exacting, detailed, and precisely timed steps explicitly written into law (RCW 61.24) that *must be interpreted and strictly construed in favor of borrowers* (*Albice v. Premier Mortg. Servs. of Wash.*, 174 Wn.2d 560, 567, 276 P.3d 1277 (2012)) in any gray areas. Because our supreme court insists that trustees must act independently and neutrally toward borrower and lender (*Klem v. Wash. Mutual Bank*, 176 Wn.2d 771, 782, 790, 295 P.3d 1179 (2013)), the only way a trustee can be seen as independent and neutral is to precisely follow exacting RCW steps and do so without conflicts-of-interest while interpreting RCW gray areas in favor of borrowers. In a clear allegorical example everyone understands [CP56], can the pitcher's dad be the home plate umpire who "*neutrally*" calls balls and strikes (and close-calls) in the World Series? Fans,

players and owners would be outraged. Conflicts-of-interest are clear—and would be worse if the umpire dad was also employed by the team owner—and made still worse if offered pay raises or bonuses for more team wins [CP 56 frame D]. Fairness/neutrality are universally understood. If biases were allowed, players would not play and fans would disappear. In Washington, trustees can nonjudicially foreclose (without a judge) ***but only if*** they follow explicit RCW steps that enforce judge-like neutrality without “umpire-pitcher/father-son conflicts.” As in base running, where a ‘tie goes to the runner,’ so does RCW interpretation of gray areas to the homeowner (*Albice Id*). Also, a pitcher is thrown out of the game for cheating if he ‘secretly spits on the ball before a pitch’. As shown herein, defendants ‘cheated’ while violating RCWs they instead interpret in favor of their strategic bank client, not homeowner.

**ERROR NO. 1: Summary judgment cannot be granted as a matter of law since genuine issues of material fact on essential elements were presented and sufficient to favor Wilsons before a jury under governing law [CP 296-315].**

An order granting summary judgment is reviewed de novo (Lybbert v. Grant County, 141 Wn.2d 29, 34, 1 P.3d 1124 (2000)). Facts and all reasonable inferences must be reviewed in the light most favorable to the nonmoving party (*Wilsons*) and must be incorporated on such review (Lybbert, 141 Wn.2d at 34). Summary judgment is not proper if there is genuine issue of material fact that therefore negates entitlement to judgment by the moving party as in this case. [CR 56(c)]; Lybbert, 141 Wn.2d at 34; Trimble v. Wash. State Univ., 140 Wn.2d 88, 93, 993 P.2d 259 (2000); *Young v. Key Pharm., Inc.*, 112 Wn.2d 216, 225, 770 P.2d 182 (1989). A fact is material if it might affect the outcome of the suit under the governing law. *Anderson v.*

*Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986). The moving party (defendants) will NOT be entitled to judgment if the evidence is sufficient for a jury to return a verdict in favor of the opponent (i.e., Wilsons). *Anderson*, 477 U.S. at 249, 106 S.Ct. 2505. Moreover, as *The U.S. Justice System—An Encyclopedia* points out (p.244): “*In many jurisdictions, a party moving for summary judgment takes the risk that ... the judge may also find that it is the non-moving party that is entitled to judgment as a matter of law.*” In this case, extensive lower court briefing firmly established as herein that *many genuine issues of material fact exist and are more than sufficient for a jury to find in favor of Wilsons; therefore* defendants are not entitled to summary judgment as a matter of law. Moreover, facts are such that a judge may actually reverse summary judgment to favor Wilsons [CP 296-315].

**Brown does not trump violated foreclosure RCWs.** Essential elements of genuine material facts were briefed and shared in oral arguments that include defendants’ clear violations of RCWs 61.24.010(2), 61.24.010(4), 61.24.020, 61.24.030(6), 61.24.030(7)(b), 61.24.030(8), 61.24.040(1)(a) and (f)(IX) and RCW 19.86 [Exhibit 7]. Throughout their briefs [CP 524-543; 322-334; 5-26, 1-4] and oral arguments (using a “distract the court” strategy), defendants present a nonsensical theory that by their internal organizations (intimately & strategically partnered against homeowner) and operations, trustees can violate and ignore nonjudicial foreclosure RCWs (and do so unimpeded, including violating “requisite” RCWs)—*as long as a combination of “true default and true beneficiary note holder/owner” are present.* Just last month, Deutsche Bank tried to call these unimpeded RCW violations “non-prejudicial

technicalities” but was rejected in favor of homeowners by Division One Appeals Court (*Schnall v. Deutsche Bank Nat’l Trust Company*, Appeals Court Division One, Unpublished Opinion, Court Case No. 73522-5-1, P.3 L 21 (June 2016)). The defendants theory is similar in this Wilsons case and can be summed up as, ‘If a true default & beneficiary/note holder/owner exist, detailed RCW steps/timings are negotiable in a courtroom. While defendants dominated most of oral arguments and briefing with this irrelevant issue (to distract focus away from their RCW failures), the Wilsons case must always come back to this: ***Were DTA RCWs & RPCs violated by defendants with harm to Wilsons, and if so, are CPA claims justified?***

**RCW 61.24 neutrally enforces exacting nonjudicial steps—even if a true default & note holder/owner actually exist** (though still doubted here). Ignoring RCW requirements with an imagined ‘trump card’ yields capricious uneven/unpredictable law application that promotes RCW cherry picking, when in fact, RCW 61.24 laws are not optional and explicitly detail steps that must be carried out with proper timing, and are not viewed as “*non-prejudicial technicalities*” as Division One Appeals Court agreed in *Schnall v Deutsche* above. This case must be decided on merits and not on irrelevant Wilsons’ multi-decade high 700/800 credit scores, hard luck family situation and medical recovery with another large company rebuild now in-process—nor on defendant attorney’s false inferences impugning Wilson character with unwarranted smears as free-loader, windfall seeker, liar/”inconsistent” peppered in QLSCW briefs.

In RCW 61.24, if lenders want to avoid statutorily required nonjudicial steps/timings, then they must choose *judicial* foreclosure. To gain lower cost nonjudicial “incredible power of sale” (per *Albice, Bain, Klem, Schroeder* et al), the beneficiary, trustee and homeowner are statutorily bound to abide by and implement RCW details that cannot be ‘cherry picked’ to aid one side over the other—while also *strictly construing RCWs in favor of borrowers* as required in *Albice v. Premier Mortg. Servs. of Wash.*, 174 Wn.2d 560, 567, 276 P.3d 1277 (2012). To fulfill neutrality requirements, the trustee must ensure RCW details are consistently applied—and especially so as in this case where the two defendants (trustee and its co-located bank lawfirm with its required undivided duty of loyalty to the bank) are both co-owned 100% by the same two lawyers who are *existentially and strategically bank-aligned for higher profits*—and are even *more* heavily favored by RCW cherry picking. Favoring one side defeats the whole purpose of a ‘neutral’ trustee who is statutorily must prevent bias by literally enforcing all RCW steps without failure. Defendants cannot ignore explicit RCW details under any conditions and cannot argue that such details are mere “non-prejudicial technicalities” as long as a default and note holder/owner are present (*Schnall v. Deutsche Bank Nat’l Trust Company*, Appeals Court Division One, Unpublished Opinion, Court Case No. 73522-5-1, (June 2016)).

All above violated RCWs rise to genuine issues of material fact that defendants must disprove to earn summary judgment. But they did not. Therefore, summary judgment must be denied as a matter of law [CR 56].

**ERROR No. 2: Multiple DTA violations (2012-2014) were overlooked. “But we stopped the sales!” is irrelevant as briefed [CP 297-318].**

Defendants violated DTA RCWs 61.24.010(2), 61.24.010(4), 61.24.020, 61.24.030(6), 61.24.030(7b), 61.24.030(8), 61.24.040(1)(a) and (f)(IX)—all must be interpreted and strictly construed in Wilsons favor (*Albice v. Premier Mortg. Servs. of Wash.*, 174 Wn.2d 560, 567, 276 P.3d 1277 (2012)). Various foreclosure defects were briefed [CP568:16-26; 569-571; 572:1-14] also including improper trustee and beneficiary appointments [CP 572:15-26; 573:1-11]. Examples further clarified are:

**Defective NOTS 2012:** Chase was not recorded as 2012 beneficiary on Wilson deed of trust in Snohomish County records—and thus not empowered to appoint a successor trustee. RCW 61.24.020 reads:

“The county auditor **shall** record the deed...and shall index...the names of the trustee and beneficiary as mortgagee.” (Emphasis add)

Since Chase was not an empowered beneficiary, QLSCW was not a properly appointed successor trustee and not vested with trustee powers to initiate 2012 foreclosure actions per Bavand and Schnall in RCW 61.24.010(2):

“...the **beneficiary shall appoint** a trustee or a **successor trustee**. Only upon recording the appointment of a successor trustee in each county in which the deed of trust is recorded, the successor trustee shall be vested with all powers of ... trustee.”

The April 2005 beneficiary in the Wilson deed of trust was Washington Mutual (WaMu) who publicly boasted of its rapid securitization business model where, within days or weeks after homeowner signatures, WaMu sold its ownership via true sales to non-WaMu lenders who then quickly pooled mortgages into mortgage-backed securities packed often with high

risk loans (i.e., ‘toxic assets’ per U.S. Senate oversight committee) into trusts sold to the public. Often, WaMu retained servicing rights, but not note or deed ownership. On 9-25-08 (3½ years after the Wilson deal), FDIC took WaMu into receivership and sold “*certain assets*” to Chase for roughly 10 cents on the dollar (FDIC press release: <https://www.fdic.gov/news/news/press/2008/pr08085.html>). Therefore, long before September 2008 (i.e., shortly after April 2005), the beneficiary of Wilsons subprime mortgage was highly probably **NOT** WaMu per WaMu’s business model. In 2012, QLSCW started foreclosure with the county recorded beneficiary as “WaMu”, not yet identifying a current beneficiary which by then could have been anyone with Chase owning only servicing rights. Bottomline—***Chase was not established in county records as beneficiary on Wilsons deed and thus had no power to appoint a lawful/vested trustee on Wilsons property.*** In 2012, Chase was *only a self-proclaimed beneficiary without trustee appointing authority.* In *Bavand v. OneWest Bank*, F.S.B., 176 Wn.App. 475, 309 P.3d 636 (2013), the supreme court set aside a trustee sale where, as in Wilson case, ***the asserted beneficiary was not properly appointed and thus created a trustee without power/authority.*** Moreover, none of defendants declarations confirm Chase owned the Wilson deed or note. Louvan declaration [CP 502-523] makes no claim about FDIC contents transferred or specified Wilson note/deed inclusion. She also confessed California QLSC (not QLSCW) relied on a notoriously error ridden May 2011 LPS computer screen read-out (Lender Processing Services) [CP 505:13-16; Exhibit 6]; LPS which disappeared from the market after being embroiled in pervasive documentation illegalities,

robo-signing, class action lawsuits, and part of an April 2011 “60 Minutes” exposé reviewing the problem (<https://www.youtube.com/watch?v=IKwB1BaFu9Q>; see Exhibit 6). QLSCW betrayed its duty of good faith by relying on indirect verification with faulty means. Louvan also points out that WaMu announced transfer of *servicing rights only (not notes) and again without specifying proof of Wilson inclusion, nor Wilson inclusion in FDIC pooling & servicing agreements*. Dunn declaration [CP 466] confirms the mid 2013 Assignment of Wilson Deed of Trust that proves Chase lacked 2012 authority to appoint a successor trustee. The affixed FDIC so-called transfer of assets says nothing about Wilson deed or note inclusion. Thus, Louvan and Dunn declarations add questions, not answers. Nor did declarations show QLSCW *ever* checked veracity of the often notorious Chase beneficiary declaration signatures—required of defendants in RCW 61.24.030(7)(b) [CP 53:14-23] due to dozens of Error #3 non neutral practices. The unlawful and powerless QLSCW 2012 actions were also “non neutral” betraying its duty of good faith to homeowner in violating RCW 61.24.010(4) neutrality requirements reconfirmed in Klem v. WashMutual. Also notably Sierra West goes to great lengths to document dates EXCEPT curiously “omitting” any reference to the date of actual deed assignment in county records that proves QLSCW had no vested trustee powers in 2012 per Bavand/Walker/Schnall. Rather, the omissions show that QLSCW rushed the process, non-neutrally, being more interested in higher speed/more profitable foreclosure in favor of its major client, Chase who incentivizes QLSCW financially with future business. The 2016 Schnall v. Deutsche opinion in Division One Appeals Court agreed:

“Under the DTA, ‘only a proper beneficiary has the power to appoint a successor to the original trustee named in the deed of trust.’ **Bavand**, 309 P.3d at 720. Moreover, ‘only a properly appointed trustee may conduct a nonjudicial foreclosure.’ **Bavand**, 309 P.3d at 642. Accordingly, ‘when an unlawful beneficiary appoints a successor trustee, the putative trustee lacks the legal authority to record and serve a notice of trustee’s sale.’ **Walker**, 308 P.3d at 720-21.

Similar to Bavand, Chase was a self-proclaimed beneficiary in 2012 without power to appoint a successor trustee in 2012:

“In Bavand, we reversed a postsale challenge to a nonjudicial foreclosure. Bavand, 176 Wn. App. at 501. **In Bavand, OneWest Bank FSB, a self-proclaimed beneficiary at the time it appointed a successor trustee, relied on an assignment of the deed of trust that was executed the day after it appointed the trustee. Bavand, 176 Wn. App. at 482-83.**”

“**We concluded the defective appointment of a trustee could not be cured where the entity was not a proper beneficiary under the Deeds of Trust Act. Bavand, 176 Wn. App. at 488. The successor trustee's lack of authority was "a material procedural defect and not a mere technicality."** Bavand, 176 Wn. App. at 490. We held: **Without a proper appointment, [the successor trustee] did not succeed to any of the original trustee's powers under the deed of trust. Specifically, it had no power to conduct a nonjudicial foreclosure and trustee's sale of Bavand's property. This is a material failure to comply with the provisions of the Deeds of Trust Act. Bavand, 176 Wn. App. at 490.**” (Emphasis added)

“... the failure of Deutsche Bank to comply with former RCW 61.24.010(2) was material and RTS did not have the statutory authority to conduct the nonjudicial foreclosure...” (Emphasis add)

RCW 61.24.010(2) governs successor trustee appointment. It provides:

“The trustee may resign at its own election or be replaced by the beneficiary. . . . If a trustee is not appointed in the deed of trust, or upon the resignation, incapacity, disability, absence, or death of the trustee, or the election of the beneficiary to replace the trustee, the beneficiary shall appoint a trustee or successor trustee. **Only upon recording the appointment of a successor trustee in each county in which the deed of trust is recorded, the successor trustee shall be vested with all powers of an original trustee.**” (Emphasis added)

In *Schnall v. Deutsche Bank Nat'l Trust Company*, Appeals Court Division One, Unpublished (Case 73522-5-1) 2016, judges further explain:

"The only reasonable reading of [former RCW 61.24.010(2)] is that **the successor trustee must be properly appointed to have the powers of the original trustee.**" *Bavand v. OneWest Bank, FSB*, 176 Wn.App. 475, 487, 309 P.3d 636 (2013). The statute makes clear that (1) the beneficiary may appoint a successor trustee if it elects to replace the trustee named in the deed of trust and that (2) only upon recording in the relevant county is the successor trustee "vested" with the powers conferred upon the trustee by the deed of trust. *Bavand*, 176 Wn. App. at 486-87. (Underlined in Division One *Schnall v Deutsche* opinion).

As the parties acknowledge, "lenders must strictly comply with the statutes and courts must strictly construe the statutes in the borrower's favor." *Albice v. Premier Mortg. Servs. of Wash.*, 174 Wn.2d 560, 567, 276 P.3d 1277 (2012); *Rucker v. NovaStar Mortg., Inc.*, 177 Wn.App. 1, 14, 311 P.3d 31 (2013). It is well established that only a lawfully appointed beneficiary has authority to conduct a nonjudicial foreclosure. *Walker v. Quality Loan Serv. Corp. of Wash.*, 176 Wn.App. 294, 306, 308 P.3d 716 (2013); *Rucker*, 177 Wn. App. at 14; *Bavand*, 176 Wn. App. at 490. A procedural irregularity that divests the trustee of statutory authority invalidates a trustee's sale. *Albice*, 174 Wn.2d at 576 (Stephens, J., concurring).

The *Albice* court noted that lenders must strictly comply with the statutory provisions and that "[p]rocedural irregularities, such as those divesting a trustee of its statutory authority to sell the property, can invalidate the sale." *Albice*, 174 Wn.2d at 567. The court held, "When a party's authority to act is prescribed by a statute and the statute includes time limits, . . . failure to act within that time violates the statute and divests the party of statutory authority." *Albice*, 174 Wn.2d at 568. The court concluded, "Without statutory authority, any action taken is invalid . . . and . . . under this statute, strict compliance is required." *Albice*, 174 Wn.2d at 568.

**Defective NOTS 2013: QLSCW falsely advertised physical presence, but tried to substitute M&H (CT corp later)—denying borrowers face-to-face advantages and invalidating foreclosures (RCW 61.24.030(6); [CP 99-109].**

In-person discussion is universally seen as far superior to writing or phone calls, and is often crucial in personal & business affairs with large impact such as, for example, home foreclosure (a family crisis) where routine phone and face-to-face trustee communications are not

uncommon. [NOTE: face-to-face is the sole reason for high revenue business flights worldwide]. Not surprisingly, legislative DTA 61.24 intent—with trustees at the center of homeowner-lender communication—was expressed in 2011:

“In recent years, the legislature has enacted procedures **to help encourage and strengthen the communication** between homeowners and lenders and to assist homeowners in navigating through the foreclosure process...” (Emphasis added)

Washington courts must also interpret and strictly construe all DTA RCW 61.24 laws “*strictly in favor of borrowers*” (*Albice v. Premier Mortg. Servs. of Wash.*, 174 Wn.2d 560, 567, 276 P.3d 1277 (2012)). With the above in mind, the “plain meaning” of RCW 61.24.030(6) focuses on **trustees** (the grammar “subject”) and in-person trustee communication & availability in a single accessible location:

“It shall be requisite to a trustee’s sale...that prior to the date of the notice of trustee's sale and continuing thereafter through the date of the trustee's sale, **the trustee must maintain a street address in this state** where personal service of process may be made, and **the trustee must maintain a physical presence and have telephone service at such address.**” RCW 61.24.030(6) (Emphasis added).

The federal court, however, erroneously interpreted that the RCW only focused on service of process--which would allow an absurd total absence of a trustee who could simply subcontract to a “registered agent” (e.g., address, on-duty ‘physically present’ person & phone) available for “service of process” and nothing else. Such agent would have no foreclosure info, knowledge/skill or license (see defendants’ plea at CP 6:15-18 to rely on this faulty federal notion in *Ayala v. Federal Nat’l Mortg. Assoc.*, 2013; *Douglas v. Recontrust Company, Nat’l Assoc.*, 2012, et al. Defendants desperately further attempt to sidestep the actual legislative

intent with an untrue blanket claim, “But there are no damages!” [CP 6:20] and also a bogus unsourced (out-of-nowhere) proclamation that “loan reinstatement is *the sole purpose* for physical presence!” [CP 6:20-22]. Huh? Registered agents *illegally reinstating* loans—in addition to service of process?

To date, no state court precedent yet exists (with its superior jurisdiction over federal courts re foreclosure) that rules on the plain meaning of: “trustee physical presence” in 61.24.030(6). How courts must derive interpretation (In *Tingey v. Haisch*, 159 Wash.2d 652, 657, 152 P.3d 1020, 1023 (2007):

“A court's objective in construing a statute is to determine the legislature's intent...*State v. Jacobs*... (2005)... ‘If the statute's meaning is plain on its face, then the court must give effect to that plain meaning as an expression of legislative intent’ (quoting *Dep't of Ecology v. Campbell*... (2002). A statutory provision's plain meaning is to be discerned from the ordinary meaning of the language... the context of the statute... related provisions, and... statutory scheme... *A provision that remains susceptible to more than one reasonable interpretation... is ambiguous* and a court may then appropriately employ tools of statutory construction...” *Campbell & Gwinn*, 146 Wash.2d at 12, 43 P.3d 4.”

Setting aside plain, ordinary meanings of language and intent for a moment, from a strict grammarian word-parsing view—yes, Wilsons agree there are indeed three ways a grammarian might read this isolated RCW sentence, “*The trustee must maintain a street address in this state where personal service of process may be made, and the trustee must maintain a physical presence and have telephone service at such address.*” Since there are three options, the RCW is considered “ambiguous,” forcing statutory construction. **The three “plain meaning”**

**options are:** One Trustee Office (for all needs), Two Offices (a trustee & a registered agent) or One Registered Agent Office (no trustee needed) per Ayala, Douglas etc

**(1) One Trustee Office** (for process of service *and* face-to-face meetings). The Washington AG chose this option in their 2014 lawsuit against QLSCW. (Defendants are now choosing option #3 below). Wilsons agree with the AG. Here, the compound sentence describes a single location—the Trustee office *with* service of process. Recalling legislative intent from RCW 61.24 (2011) above: “... to help encourage and strengthen the communication...”

Even QLSCW understood this by locating itself in the *same office suite* with its 10-year registered agent for service of process, M&H—even prior to its near half million dollar AG fine for QLSCW’s 2-month inaccessible absence via CT Corp in Olympia as a trustee substitute according to erroneous federal interpretation defendants now argue. Notably, QLSCW was not accessible bu the public January thru February 2014 per multiple AG testimonies that contradict QLSCW West’s false testimony [CP 171:25-26]—*a testimony unnecessary if QLSCW truly believed “registered agent can substitute.”* Also, why would QLSCW pay a half million dollars if they truly believed in the feds ‘trustee substitute theory that the AG suit so strongly rejects?’

**(2) Face-to-Face Meetings Facilitated**. Here, the sentence is comprised of two separate ideas: (a) a location identified for full-time service of process (which may be different from a trustee address where hours might be limited), *and* (b) the trustee must *also* have an accessible address with phone service for timely contact needs not uncommon during foreclosure.

**(3) Face-to-Face Meetings Blocked** (*legitimizing complete trustee physical absence*). Here, the compound sentence is interpreted to tightly link an idea that only a full-time service of process location is important and that such location must be staffed with a phone by a registered agent of the trustee—*and that actual “physical presence” of trustee is unnecessary/unimportant!* a preposterous idea.

RCW 61.24.030(6) plainly requires trustees be present for any reason and at any time during a sale period—even if a homeowner never makes contact. This RCW is a “requisite” not an option. Thus, in QLSCW’s half million loss by AG decree, QLSCW paid ALL homeowners and stopped ALL sales—regardless of whether a homeowner had attempted any contact. QLSCW claim that Wilson had no need or never made contact were and are irrelevant.

Finally, the court must ask, “Which of the 3 options aligns with the supreme court requirement to **interpret and strictly construe all of DTA laws in favor of borrowers?**” (*Albice Id. (2012)*). In summary, the federal court interpretation wholly ignores a “plain meaning” of RCW words, ignores grammar rules, ignores published legislative intent, ignores criticality of in-person communication, ignores the supreme court requirement to ‘strictly construe all DTA law in favor of borrowers,’ and even goes so far as to insert a new unwritten “homeowner-harming registered agent only” concept allowing total absence of a trustee—exact opposite of what RCW actually says and what legislature intended.

**Defective Notice of Trustee Sales Issues on 2012 and 2013 Attempts:** QLSCW did not have the right to rely on the Beneficiary Declaration *due to its violations of good faith* against Wilsons (RCW 61.24.030(7)(b) and QLSCW did not perform services except processing paperwork out of SanDiego.

QLSCW was obligated to conduct further due diligence—beyond disreputable LPS computer read-out screens (Exhibit 6) but did not—such as signature validation of beneficiary declaration (ie., misrepresented signatory “Officer” status; robosigner; MERS but not Chase “Officer” [CP 53:14-23; CP 61-62]) and verification of proper (chain-of-title) assignments on note and deed. Other violations included QLSCW providing wrong/confusing address information in NOD (RCW 61.24.040(f)IX, QLSCW did not perform trustee services but outsourced it to a separate corporation in SanDiego, “QLSC” --notices and paperwork not performed in Washington thus explaining why the AG lawsuit’s Duenas declaration of obtained admission from QLSCW Rodney McCumsey that homeowners, “have to deal with SanDiego office or attorney...The Seattle office does not have anything to do with any documents other than to ‘process’ them. They do not deal with people in general.” [CP152:23-26 and 153:1-4]. Finally, due to defendants many DTA violation and valid CPA claims, defendants are implementing a distract/confuse strategy to move courts away from simple claims. with irrelevant “note hold/own” issues, falsely impugn Wilson character, and a host of general/improper pontifications and distracting/misleading case law that led to improper summary judgment herein appealed.

**ERROR No. 3: The court overlooked a tsunami of non neutral, hidden and deceptive defendants operations violating RCW 61.24.010(4) & Klem v WashMutual—including a finding of co-mingling primae facie evidence [CP 285; 272-276]]. Nearly all are unchallenged material fact, blocking summary judgment.**

In briefing, defendants did not deny truth of below listed items. Instead, they brushed all aside saying *without specifics*, “Oh, that’s all been rejected in other courts!” Without specific counter argument, each listed item must stand as true. Before review of the list below, this should first be noted: The bank’s lawfirm (M&H) has a required undivided duty of loyalty to foreclosing banks & beneficiaries—its sole business –see [www.mccarthyandholthus.com](http://www.mccarthyandholthus.com). Therefore M&H cannot legally represent homeowners as QLSCW well knows. Also, M&H cannot ethically be QLSCW’s lawfirm in any manner as is now the case. Even with this serious conflict-of-interest, M&H still unethically provides exclusive legal services to QLSCW! Moreover, QLSCW/QLSC parent is managed by *a past M&H lawyer* who knows or should know QLSCW owes good faith neutrality to borrowers, yet unbelievably QLSCW still officially guides unsuspecting homeowners to M&H for legal counsel with homeowners *totally unaware* that M&H has undivided duty of loyalty to beneficiary against the homeowner—and hence Judge Okrent’s outrage discussed below (Trustee; Deed of Trust; Client Conflict, 926 Op.WSBA at 3 (1987); RPC 5.7);

“...the Washington Supreme Court expressed substantial concern when counsel for the lender and the trustee were representing both entities at the foreclosure stage, in litigation, and before that supreme court. [Schroeder]. This is a bad practice, given the duties that trustees have to all parties in a foreclosure; the trustee must have unfettered discretion to follow the applicable laws and procedures.” [Leen, D. *Wrongful Fore-closures in Washington*, 49:2 Gonzaga Law Review 331, 338, (2014)]

The unchallenged ‘tsunami list’ on non neutrality violations should be viewed as a single *AGGREGATE* violation against Wilsons [CP 564:17- ; 565-568:14; 573:22-26; 574:1-2]— listed here and briefed [CP 93-295; CP 52:23-28, CP 53-58] -as follows: the bank’s lawfirm

M&H is owned 100% by the same two lawyers who also own 100% of QLSCW (and 100% of QLSC headquarters in SanDiego) who is required to be neutral to banks and homeowners; the two sole owners can fire QLSCW, QLSC and/or M&H CEOs and their officers at will and for any operational/philosophical misalignment or performance that may threaten profits (such as slow foreclosures); as purported beneficiary, Chase is an existentially important major revenue source for QLSCW, QLSC and M&H who cannot afford to lose Chase as a client; QLSCW and M&H are strategic business partners together incentivized financially by banks (including Chase) for faster foreclosures to keep and get more Chase foreclosure business; Chase routinely checks 'foreclosure speed scorecards' kept on QLSCW/QLSC/M&H speeds of foreclosures [CP ]; QLSCW and M&H also review their foreclosure speed scorecards to ensure happy bank/beneficiaries (i.e., Chase); slower foreclosure speeds put both QLSCW and M&H at risk of lost future Chase business; QLSCW and M&H shared the exact same office suite with shared rent, utilities, telecommunications & support staff; neither QLSCW nor M&H share their office address or suite with a 'Homeowner Expert Lawfirm' to offset their extremely non-neutral strategic business partner arrangement; QLSCW in their rush to foreclose did not first verify lawful beneficiary status of Chase in county records; thus, QLSCW unlawfully posted a Notice Of Trustee Sale against Wilsons in 2012 before Chase was recorded as beneficiary; QLSCW told Wilsons it must get the bank's okay for sale postponement; QLSCW phone calls jumped to SanDiego QLSC headquarters instead of direct to local office staff as law requires; only the bank's lawfirm M&H was present at the QLSCW

office (when QLSCW was unlawfully absent) upon Wilson-Munson visits to the QLSCW office [Exhibit 3; CP 55:6-9]; M&H with its legal undivided duty of loyalty to Chase defended QLSCW in the Wilson case until Judge Okrent denied both QLSCW and M&H motions to dismiss based on their non-neutrality;

“[b]ecause the deed of trust foreclosure process is conducted without review or confrontation by a court, **the fiduciary duty imposed upon the trustee is exceedingly high**... The court highlighted four duties of the trustee, including... (4) the **duty to prevent a breach of fiduciary duty** by ensuring that the attorney withdraws **when an actual conflict of interest arises between the roles of attorney for the beneficiary and trustee**. [Cox v. Helenius, 693 P.2d 683, 686-687 (Wash. 1985)] (Emphasis added)

Despite Cox & Helenius, QLSCW’s managing attorney sends out all email from him to homeowners routinely with the fixed footer, “Legal Disclaimer... ***Should you desire to obtain a full legal opinion, we would be happy to submit your inquiry to McCarthy & Holthus, LLP for handling.***” [CP 280-Legal Disclaimer] (Emphasis added re: QLSCW actually steering homeowners to M&H); in the same email with the above footer from QLSCW “...Quality ... as the Trustee, cannot compel Chase to review...for a loan modification. *Because of this, the 4/12/13 Trustee’s sale may proceed if Chase so directs.*” [CP 282, line 1-2] (Emphasis added re: QLSCW acting as bank agent as QLSCW also admitted concurrently in Klem v WashMutual that overlapped Wilson foreclosures); during litigation, in retaliation and/or for financial incentives, QLSCW chose to increase Wilson stress by mailing a barrage of over 170 unnecessary (and well-known emotionally distressing foreclosure notices) monthly mailings out of SanDiego to Wilsons, over just 15 months instead of ordering a temporary postponement

during litigation as an “independent and neutral” judge would do [CP 68]; mailings were also sent during the 2014 2-month period when QLSCW was unlawfully absent and sued by Washington AG (see above Error #2 Defective NOTS 2013); QLSCW [CP 201] non-neutrally sent a Notice Of Default [CP 199-204] on 10-16-2012, *over six weeks before it received a Chase Declaration Of Ownership* on 11-30-2012 that a Mr. Theener signed only 11 days earlier [CP 495]; QLSCW relied on an unverified Beneficiary Declaration [CP 495] signed 11-30-12 by “questionable” Mr. Theener as MERS VP—neither a Chase company nor Chase officer as misrepresented on the declaration [CP 53:14-23; CP 61-62] and while QLSCW well knew of widely publicized national practices of unlawful Chase robo signing (e.g. Wall St. Journal; 60 minutes, etc)—even though RCW 61.24.030(7)(b) does not allow reliance on beneficiary declarations due to QLSCW non-neutrality violations herein described; QLSCW did not check county records to verify deed assignment to Chase before initiating 12-11-2012 Notice Of Trustee Sale (i.e., when QLSCW thus had no trustee power to do so (per *Bavand v OneWest Bank, F.S.B.*, 176 Wn.App. 475, 309 P.3d 636 (2013)); QLSCW boldly *hired the bank’s lawfirm M&H with its undivided duty of loyalty to Chase to fight this lawsuit*; either thumbing its nose at court or pushing for its financial gain, QLSCW non neutrally initiated yet another Notice Of Trustee Sale on 9-19-13 while a valid lawsuit against foreclosure was in full swing and just weeks after a judge denied their dismiss motion for non neutrality!! (i.e., a neutral judge would postpone) [NOTE: this occurred nine months before hiring Oregon attorney replacement]; after the judge dismissed their dismiss motion, M&H and QLSCW

immediately attempted to separate themselves into different (but adjacent) offices—but kept offices connected via an out-of-view back office staircase [CP 171:24]; QLSCW admitted in Klem v WashMutual (concurrent overlapping Wilson foreclosure) that QLSCW “always” checked first for bank permission to postpone a sale—further proving QLSCW non-neutral and dependent bank fealty against homeowners and Wilson; during this same concurrent/overlapped period with Klem v WashMutual, QLSCW admitted to routine back-dating of foreclosure papers—a crime (gross misdemeanor) against homeowners; past 2006-2010 QLSCW Vice Presidents (see Sec Of State Corp Records) were the only QLSCW officers working in Washington, yet they were full time M&H lawyers—thus simultaneously owing undivided loyalty to beneficiaries and banks (an RPC 5.7 violation [CP 558-562]); QLSCW was financially incentivized to harass homeowners to force faster foreclosures for future profits (e.g., 170+ threat mailings to Wilsons above). QLSCW even employed acts of omission against Wilsons to drive further homeowner distress here when QLSCW discontinued Wilson sales in 2013 (August 13) and 2014 (May 16), QLSCW did NOT alert the distressed Wilsons (thus allowing stress to continue), but did contact the beneficiary per their routine described in Klem v WashMutual. The “omission” evidence of continuing stress on Wilsons (and other homeowners under QLSCW foreclosure) appears as profit-driven policy against homeowners’ as shown more seriously in QLSCW similar treatment of Davis courts [declaration at CP 39:26 and CP 40:1-5].

On 2-28-2013, the Washington Supreme Court issued two *en banc* decisions emphasizing need for trustee neutrality to both borrower and beneficiary. The first case was 2013 Klem v. Wash Mutual/QLSCW that was concurrent with QLSCW Wilson foreclosures:

*“Again, the trustee in a nonjudicial foreclosure action has been vested with . . . incredible power. Concomitant with that power is an obligation to both sides to do more than merely follow an unread statute and the beneficiary’s directions. If the trustee acts only at the direction of the beneficiary, then the trustee is a mere agent of the beneficiary and a deed of trust no longer embodies a three party transaction. If the trustee were truly a mere agent of the beneficiary there would be, in effect, only two parties with the beneficiary having tremendous power and no incentive to protect the statutory and constitutional property rights of the borrower. We hold that the practice of a trustee in a nonjudicial foreclosure deferring to the lender on whether to postpone a foreclosure sale and thereby failing to exercise its independent discretion as an impartial third party with duties to both parties is an unfair or deceptive act or practice and satisfies the first element of the CPA. Quality failed to act in good faith to exercise its fiduciary duty to both sides and merely honored an agency relationship with one.” (bold emphasis added)*

The second case was: Schroeder v. Excelsior Mngmt Group where Phil Haberthur performed duplicate roles of trustee and lender attorney, and was party to the lawsuit because of his conflicting role as Trustee. The Court entered a footnote further backing Klem:

*“... we are uncomfortable reciting these facts without making an observation concerning the multiple roles played by Haberthur lest we seem to be tacitly approving of an attorney for a party acting as the trustee. The deed of trust act ...imposes a duty of good faith on the trustee that may, at least in contested foreclosure actions, be difficult for a party’s attorney to execute.” [RCW 61.24.010(4)].*

*“We note the act specifically states that the trustee ‘shall have no fiduciary duty or fiduciary obligation to the grantor ... However, we also note this court has stated that ... at a minimum, a foreclosure trustee must be independent and ‘owes a duty to act in good faith to exercise a fiduciary duty to act impartially to fairly respect the interests of both the lender and debtor.’ Klem v. Wash. Mutual Bank [ and QLSCW], No. 87105-1, slip op. at 20 (Wash. Feb. 28, 2013). ‘The relationship between lawyer*

**and client is a fiduciary one in which the lawyer occupies the highest position of trust and confidence.’ RPC 1.8 cmt 17. ‘[A]ttorneys owe an undivided duty of loyalty to the client.’ Mazon v. Krafchick, 158 Wn.2d 440, 448-49, 144 P.3d 1168 (2006). At the very least, on review, it makes it difficult to determine which of Haberthur’s acts were made in his capacity as trustee and which as counsel for the beneficiary...”(Emphasis add)**

**ERROR No. 3b: The court overlooked Judge Okrent confriming primae facie evidence of QLSCW/M&H commingling against Klem-based neutrality [CP 545].**

Defendants tortuously attempt to discredit Judge Okrent’s “finding as NOT finding” what he called “prima facie evidence of non-neutrality” [CP 69]. I witnessed Judge Okrent’s statement when he stared into the eyes of the QLSCW attorney and said with disdain (and close to verbatim), “Counselor, I know Klem. I studied Klem. I read Klem three times...and weren’t you one of the defendants in Klem, counselor?” When defendants then requested Judge Okrent NOT to document rationale on his order to deny dismissal for “prima facie evidence of non-neutrality according to Klem,” Judge Okrent smiled, stared and chuckled aloud saying, “You would like that, wouldn’t you counselor!” Thus also confirming this genuine material fact.

**ERROR #3 DEFENDANTS NON-NEUTRALITY CONDUCT SUMMARY:** Per Marcia Clark, “The defense always pushes the envelope, but it’s up to the judges to stop them.” And allegorically [CP 56], fans cannot trust a pitcher’s umpire-dad—just as with M&H and QLSCW who are herein pushing the envelope in Washington courts against Wilsons. M&H had legally undivided loyalty to Chase, yet simultaneously aligned itself in an extraordinarily intimate, “strategic business partner” relationship with QLSCW that was highly financially incentivized to conduct higher speed foreclosures against homeowners—even

sharing the same office suite & costs, and with “untrustable” QLSCW recommending M&H to homeowners looking for “authoritative” legal assistance—while not disclosing their partnership or M&H’s undivided loyalty to banks—to unwary citizenry who also were not told that the same two lawyers who own 100% of M&H and 100% of QLSCW wield the power to fire any officers of either/both companies who must march in a lock-step business model that relies on higher profits based on speedier foreclosures (using measured scorecards) against homeowners! The relationship of QLSCW-M&H aligned against homeowners is reprehensible, effectively making “QLSCW an untrustable trustee” under Klem v. Wash Mutual by any measure—much like being at a baseball game (Exhibit 2; CP 56]) where excited fans and opposing team are completely unaware that the homeplate umpire is the pitcher’s biologic father who calls balls, strikes, and base running. In this court appeal (CP 56], QLSCW (“Team-A Dad Umpire”) and M&H (“Team-A Coach”) essentially are defending against Wilsons (Team-B) by effectively saying, ‘Prove that the last pitch was *not* a strike!... While Wilsons approach the league commissioner (“courts”) to claim and demonstrate that the M&H/QLSCW system is rigged, grossly unfair and with selected unfair RCW 61.24.010(4) violations and outcomes to prove it—which further back the Klem court and legislature intent for strict neutrality in RCW 61.24.010(4).

**ERROR No. 4: The court asserted that Brown v Dept of Commerce was the central matter “turning the case” when, in fact, Brown was not relevant to core issues.**

Wilson’s sole complaint was: Unlawful foreclosure *process violations* (yes or no?) causing harm that justify CPA claims (yes or no?). Thus, if the Chase CEO marched into court with an

original gold-framed/certified original note, defendants must still be denied summary judgment *because they violated the DTA RCW 61.24 and did not carry out the nonjudicial foreclosure according to explicit process steps. Defendants strategy is simple: ignore DTA process as “non-prejudicial technicalities” (rejected in Division One, Schnell v Deutsche) using distraction/confusion over other matters such as Brown and various others—because defendants cannot argue on the centerpiece: DTA violations yes/no, with CPA harm yes/no.*

**ERROR No. 5: The court should have denied summary judgment due to unethical QLSCW coverup testimony (w/ forgery) in first SJM and calling a re-mailing “identical.”**

Having lost Wilsons’ attorney, Mr. Trumbull, when his law firm dissolved in summer 2015, the new QLSCW Oregon attorney pressed the disadvantaged Wilsons directly to withdraw. This started with a surprise 10-9-15 150+ page SJM (*preemptively* before the agreed end of their 2014 moratorium) to block Wilsons in-process 2014 discovery that, in good faith, had been put on-hold *temporarily* for the moratorium). The maneuvered SJM was served on Wilsons on 10-9-2015 exactly at the 28 day CR 56 cutoff deadline for the 11-6-15 hearing and contained a *forged QLSCW 10-6-15 testimony* [Exhibit 4; CP 192:8-10] (by QLSCW manager Sierra West) that *actually opposed* QLSCW narrative *and supported Wilson claims*. It appears that, upon their late discovery of the 10-6-15 forged testimony, QLSCW stopped the court filing on the 9<sup>th</sup> (after Wilsons were served that day near lunchtime—just 25 minutes from courthouse) until a back-dated 10-8-15 changed testimony could be swapped in for the late court filed copy on 10-12-2015. Thus, QLSCW sent a different SJM to the courthouse with a 10-8-15 revised testimony on 10-12-15—keeping the swap secret from Wilsons—and then,

when a continuance was agreed to a month later for the rescheduled December hearing, the QLSCW attorney phoned Wilson saying, "I am sending you another SJM next week for our new hearing date that is 'identical' to the previous SJM served (on 10-9-15) -- with only dates changed" –and again, no mention of the 10-6-15 forged testimony change out. Only in late November did Wilsons newly arranged pro bono attorney discover the switched testimonies.

The QLSCW attorney then explained that their 10-6-2015 sworn declaration and forgery by a senior QLSCW manager was "*just a mistake.*" Wilsons ask, "How can a forgery be 'a mistake'?" Who did the forgery? Under whose direction did the forgery take place? Who put and approved the forgery placement into the SJM document? Who put it onto Tomasi Salyer Baroway pleading paper? Even if it was "a mistake," the 10-6-2015 testimony stands for fact finder review, and its 10-8-2015 replacement [CP 219] possibly rejected by fact finder. Moreover, the concealed replacement may be litigation misconduct and grounds for summary judgment denial or reversal in favor of Wilsons by itself. The chronology of hidden maneuvers are summarized in Exhibit 8 (in Reply). Moreover, the separate Sierra West declaration in the 2-26-2014 AG lawsuit [CP 171:19-22; CP 101-106] against QLSCW (also related to QLSCW unlawful acts against Wilsons) was also proven false per multiple Washington AG declarations CP 101-106] which thus calls into question and impeaches all Sierra West oppositional declarations. Weber v. State explains that the court has power to throw out lower court ruling:

"The inquiry into whether the integrity of these proceedings has been undermined should focus on the extent to which the court's truth-finding function has been impaired, thus throwing into question any ruling that might ultimately issue." *Weber v. State*, 457 A.2d 674, 679 n.6 (Del.1983)

Then, without notifying Wilsons, QLSCW filed a new/different summary judgment on 10-12-2015 that, unknown to newly ProSe'd Wilsons, was filed too late for the 11-6-2015 hearing (a CR 56(c) violation). This led *Wilsons to falsely think that their 10-9-16 service of process was also an on-time filing, and left Wilsons unaware that ONLY a witness declaration had been swapped out in the 10-12-16 filing.* [NOTE: the swap was discovered over six weeks later by an 11<sup>th</sup> hour pro bono attorney who *also discovered the signature forgery on the Tamasi-Salyer-Baroway label of defendants motion!* [see Exhibit 4 comparing signatures; CP 193:24-25 vs CP 221:25]. When the Wilson attorney discovered the changed testimony, swap and forgery in late November 2015, QLSCW counsel brushed it aside as “just a mistake” (nothing about forger identity, any forger/supervisor firing, why/how, etc). The newly changed 10-8-2015 declaration [CP 219-221] appeared near identical to the 10-6-2015 version [CP 191-192] except for omitted lines at CP 192:8-10 and at CP 192:11-12 that confirmed securitization. But the new declaration date of 10-8-2015 does not explain *why filing too late* on the Oct 12<sup>th</sup> would be necessary when, on 10-9-15, the court was only 25 minutes from Wilsons’ home who were *just served their copy near noon on the 9<sup>th</sup>*—so why not easily get the court’s copy in on time that day? Although it may appear that late Oct 9<sup>th</sup> recognition of service to Wilsons (with the damaging Oct 6<sup>th</sup> forged declaration) may have led to just-in-time stop of delivery/filing in court, with later back-dating of Oct 8<sup>th</sup> for later delivery/filing on Monday the 12<sup>th</sup>, it may be less troublesome that the forgery itself. Also notably, the M&H summary judgment was dated

Oct 9<sup>th</sup> but also received via USPO late on 10-10-2015 Saturday, and thus both defendants' motions violated the 28 day notice.

**ERROR NO. 6: The court allowed defendants to violate ethical standards by premature breaking of an agreement that subsequently blocked in-process plaintiff discovery.**

Wilson's in-process discovery in 2014 (an as yet unanswered important 3-10-2014 interrogatory and a do-over 30(6)(b) deposition because of defendant uncooperativeness via lack of required preparedness) was only temporarily put on hold in the moratorium agreement made with the new (and very busy) onboarding Oregon attorney for QLSCW (newly appointed due to Judge Okrent denial of QLSCW/M&H motion to dismiss due to co-mingling non neutrality issues). Wilsons maintain that defendants violated the moratorium agreement (to restart this case only after Jackson v QLSCW was finalized) by issuing a preemptive 10-9-2015 summary judgment and thus cleverly avoided answering the 3-10-2014 interrogatory and deposition discovery due process [CP 558:4-9]—thus, violating state and local CR 56 summary judgment standards.

**ERROR No. 7: The court allowed defendants' attorney to denigrate and impugn the character of Plaintiffs hoping to dismiss the entire Wilson declaration—inferring Wilson lied about his witnessed trip to the QLSCW office. [see Exhibit 3]**

Defendants attorney manufactured a false & bizarre “inconsistency” narrative [CP 23-24] hoping to impugn Wilson character and impeach his declaration. On deposition, Wilson simply had stated his fear of contacting non-neutral and sophisticated QLSCW (see non-neutrality list in Error #3 above) about complex legal matters without counsel. True. In his declaration Wilson states he personally visited QLSCW office but QLSCW staff were not present in violation of the requisite RCW 61.24.030(6). Also true and witnessed per Exhibit 3. So why

are two truths “inconsistent?” Answer: Because QLSCW desperately wants to find a way, however strangely, to unethically and falsely impugn Wilson truth-telling, to block Wilson testimony [CP 24:17-18]. The attorney infers Wilson lied about a simple fact of QLSCW unlawful absence as disallowed (?) by requisite RCW 61.24.030(6)—Thus, QLSCW counsel “imagines” that it’s okay to violate “requisite” law *as long as such physical absence doesn’t directly lead to a specific harm*. No. The law does not say that. Moreover, it must be strictly construed in favor of borrowers—not trustees (see *Albice, Frias* et al). The judge mistakenly signed the attorney’s “inconsistent” note in summary judgment order item #7 which should be struck from the record and Wilson declaration accepted.

**ERROR No. 8: ERROR NO. 8: The court erred by concluding its judgment prematurely and incorrectly so that CPA arguments were not decided.**

**CPA Summation Fact:** *The “in-commerce” RCW and neutrality violations of defendants’ deception proximately harmed plaintiffs and could easily (and did already) harm large numbers of state citizens and will harm more at much larger costs if such error is allowed to stand.*

Clear, cogent plaintiff CPA arguments were put forward in 2013 [CP 628:7-23, 629-630, 631:1-3] and in 2015 [CP 316-319; 574:3-26; 575-576; 577:1-7] explaining why and how CPA can and should be properly applied against defendants in this case, including that this case easily meets all five standard CPA tests as described in *Hangman (Hangman Ridge Training Stables v. Safeco Title Ins., Co., 105 Wn.2d 778, 780, 719 P.2d 531 (1986)* and also supported elsewhere—including how plaintiffs were harmed, fully consistent with *Frias v. Asset Foreclosures, Panag v Farmers Ins., Indoor Billboard/Wash. Inc v. Integra Telecom of Wash., and Demopolis v. Galvin* argued by defendants. Of the five tests, defendants agree that

numbers two and three of the five tests are obviously met, leaving only #1 (unfair or deceptive act), #4 (plaintiff business or property injury) and #5 (causal link of unfair/deceptive act to injury) for debate. Taking one at a time:

**CPA Test #1—Unfair or Deceptive Act.** In September 2012, QLSCW rushed in unfairly (*for QLSCW financial self-interest described elsewhere*) as a falsely “vested trustee” to initiate a foreclosure actions *a full seven months before being legally able to be vested with trustee power to do so* as directly required in RCW 61.24.010)(2):

*“...resignation of the trustee [in the deed of trust] shall become effective upon the recording of the notice of resignation in each county in which the deed of trust is recorded. If a trustee is not appointed in the deed of trust, or upon the resignation, incapacity, disability, absence, or death of the trustee, or the election of the beneficiary to replace the trustee, the beneficiary shall appoint a trustee or a successor trustee. **Only upon recording the appointment of a successor trustee in each county in which the deed of trust is recorded, the successor trustee shall be vested with all powers of an original trustee.**” (Emphasis added).*

As described in Errors #2 above, any new “beneficiary” not named in the current deed of trust record must first be legitimized by having an assignment of such deed to the new beneficiary recorded in Snohomish County records. This was made clear in *Bavand v. OneWest Bank*, as already argued above.

*Klem v Wash Mutual* also makes clear that QLSCW performed unfair or deceptive acts by deferring to Chase regarding postponements (and in *Wilson's* distress-inflicting monthly postponements showing non neutrality or punishment) and by unfairly (and non neutrally) initiating NOD before having Chase ownership declaration, and initiating a NOTS before trustee vested with powers via Deed Of Trust assignment in county records.

*“Again, the trustee in a nonjudicial foreclosure action has been vested with . . . incredible power. Concomitant with that power is an obligation to both sides to do more than merely follow an unread statute and the beneficiary’s directions. **If the trustee acts only at the direction of the beneficiary, then the trustee is a mere agent of the beneficiary and a deed of trust no longer embodies a three party transaction. If the trustee were truly a mere agent of the beneficiary there would be, in effect, only two parties with the beneficiary having tremendous power and no incentive to protect the statutory and constitutional property rights of the borrower. We hold that the practice of a trustee in a nonjudicial foreclosure deferring to the lender on whether to postpone a foreclosure sale and thereby failing to exercise its independent discretion as an impartial third party with duties to both parties is an unfair or deceptive act or practice and satisfies the first element of the CPA. Quality failed to act in good faith to exercise its fiduciary duty to both sides and merely honored an agency relationship with one.**” (bold emphasis added)*

The purported beneficiary recorded QLSCW as successor trustee in county records seven months AFTER notice of default was issued by QLSCW without vested power to do so.

Moreover, the supreme court made clear that courts must rule on unfairness and deception on a case-by-case basis due to *infinite ways humans can be unfair and deceptive* as discussed in *Panag v. Farmers Ins. Co. of WA* and as stated clearly in *Klem v. Wash Mutual/QLSCW*:

“Any doubt should have been put to rest in *Panag v. Farmers Ins. Co. of Wash.*, 166 Wash.2d 27, 48, 204 P.3d 885 (2009), where we discussed both per se and unregulated unfair or deceptive acts. . . . We quoted with approval language from the congressional record on the federal consumer protection act:

“ ‘It is *impossible to frame definitions which embrace all unfair practices. There is no limit to human inventiveness* in this field. Even if all known unfair practices were specifically defined and prohibited, it would be at once necessary to begin over again. . . . It is also practically *impossible to define unfair practices so that the definition will fit business of every sort. . . .*’ ”

Panag, 166 Wash.2d at 48, 204 P.3d 885 (quoting State v. Schwab, 103 Wash.2d 542, 558, 693 P.2d 108 (1985) (quoting H.R. Conf. Rep. No. 1142, 63d Cong., 2d Sess. 19 (1914))). Given that there is “no limit to human inventiveness,” *courts... must be able to determine whether an act or practice is unfair or deceptive to fulfill the protective purposes of the CPA.*

To resolve any confusion, we hold that *a claim under the Washington CPA may be predicated upon a per se violation of statute, an act or practice that has the capacity to deceive substantial portions of the public, or an unfair or deceptive act or practice not regulated by statute but in violation of public interest.*

We note in passing that *an act or practice can be unfair without being deceptive*, and Klem and the Washington State attorney general also argue *it is sufficient that Quality's conduct was unfair*. They point out that *the CPA itself declares “unfair acts or deceptive acts or practices” are sufficient to satisfy the acts or practices prong of a CPA action. The “or” between “unfair” and “deceptive” is disjunctive.* Washington's CPA is modeled after federal consumer protection laws and incorporates many of provisions of the federal acts. Panag, 166 Wash.2d at 48, 204 P.3d 885; Hangman Ridge, 105 Wash.2d at 783, 719 P.2d 531. The legislature declared the CPA was intended “to complement the body of federal law governing restraints of trade, unfair competition and unfair, deceptive, and fraudulent acts or practices in order to protect the public and foster fair and honest competition.” *RCW 19.86.920. The Washington legislature instructed courts to be guided by federal law in the area.* Id. Although we have been guided by federal interpretations, Washington has developed its own jurisprudence regarding application of Washington's CPA. Current federal law suggests a *“practice is unfair [if it] causes or is likely to cause substantial injury to consumers which is not reasonably avoidable by consumers themselves and is not outweighed by countervailing benefits.”* 15 U.S.C. § 45(n).

*Our statute clearly establishes that unfair acts or practices can be the basis for a CPA action.* See RCW 19.86.020 (“[U]nfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful.”); RCW 19.86.090 (“Any person who is injured in his or her business or property by a violation of RCW 19.86.020 may bring a civil action in superior court.”).

**CPA Test #4—Plaintiff Business or Property Injury.** This premature and unfair notice (by a trustee without vested power to do so) touched off the Wilsons’ considerable private efforts (and financial costs [CP 51]) to study and better understand the problem—***long before obtaining legal help.*** Such efforts included printing reams of documents (printer ink, paper, staples, paper clips, notebooks, binder divider tabs, gasoline and wear & tear on vehicles

to run such errands, coffee shop meetings paying the tab with knowledgeable contacts, pre-engagement free meetings with attorneys, a separate paid pre-engagement legal analysis by expert attorneys, forensic audit and excluding the mountains of personal time taken away from Wilsons' new re-start/startup business in product development—all of this proximately caused by the unfair and deceptive QLSCW act of issuing a notice of trustee sale without power to do so—and all of this many months before engaging an attorney in the May 2013 timeframe to activate the June 4, 2013 lawsuit. Thus, per en banc supreme court ruling (*Frias v. Asset Foreclosure Servs., Inc.*, 181 Wn.2d 412, 430-31, 334, P.3d 529, 537 (2014)), Wilson costs far exceeded “a postage stamp” —the minimum minimum to claim damages under CPA in RCW 19.86 and even justifying in this case as in Schnall and others, treble damages.

**CPA Test #5—Causal Link of Injury to Unfair/Deceptive Practice.** This is simple. “**BUT FOR**” the notices of trustee sale deceptively and prematurely filed by a QLSCW without vested trustee power to do so, the Wilsons would certainly not have suffered the high pressure, distress and, importantly for CPA, financial loss *proximately caused* [CP 50:6-28, CP 51]. [NOTE: defendants attempt escape by claiming a nonsense Wilson “windfall” idea apparently because Wilsons submitted a comprehensive spreadsheet showing total costs to give courts a full perspective]. Nowhere did Wilsons claim labor costs could or should be included in losses—and all attorneys knew this very well. As another “court distracter” defendant counselor simply and desperately attempts to unfairly further malign and impugn Wilson character/dignity —such attorney attempt which should be ignored while the court focuses on

Wilson line items that are consistent with Frias (*Frias v. Asset Foreclosure Servs., Inc.*, 181 Wn.2d 412, 430-31, 334, P.3d 529, 537 (2014)) which must and do far exceed the costs of a postage stamp] which, of course, excludes labor losses and legal costs after engaging an attorney.

Notably, only six weeks after filing the June 4, 2013 lawsuit, on July 11, 2013, Judge Okrent denied the defendants' (QLSCW and M&H) summary judgment motion to dismiss "for prima facie evidence of nonneutrality" required in *Klem v. Wash Mutual/QLSCW et al* where Judge Okrent aghast asked defendants' attorney, "Weren't you a co-defendant in *Klem*?" Here again is *Klem v. Wash. Mutual/QLSCW* as:

***"We hold that the practice of a trustee in a nonjudicial foreclosure deferring to the lender on whether to postpone a foreclosure sale and thereby failing to exercise its independent discretion as an impartial third party with duties to both parties is an unfair or deceptive act or practice and satisfies the first element of the CPA. Quality failed to act in good faith to exercise its fiduciary duty to both sides and merely honored an agency relationship with one."*** (Emphasis bold & underline added).

QLSCW already openly admitted in *Klem v Wash Mutual/QLSCW* (which dates overlap the *Wilson case*), that it **ALWAYS deferred to the lender on postponement decisions in ALL** its foreclosures—a fealty/non-independent attitude also confirmed during QLSCW foreclosure attempts against Wilsons in QLSCW email to Wilsons earlier mentioned (e.g., "... *Because of this, the 4/12/13 Trustee's sale may proceed if Chase so directs.*" (Emphasis added) [CP 282, line 1-2]).

## V. CONCLUSION

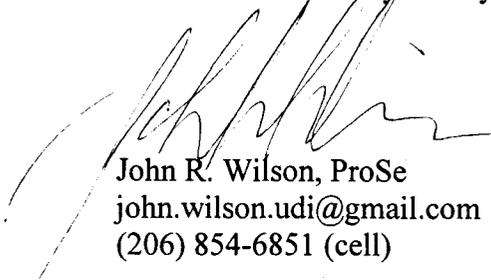
When the dust clears from defendants many distracters, false/irrelevant argumentation and unprofessional acts set aside, there are two issues on appeal:

(1) ***“Did defendants violate foreclosure RCWs, and if so, does CPA apply?”*** Answers to both are YES. From Sept 2012 — May 2014, strategically partnered financially incited defendants operating together, unlawfully attempted two foreclosure processes against Wilsons in violations of DTA RCWs that proximately caused Wilsons financial harm that meets RCW 19.86 CPA test.

(2) **“Were issues of material fact presented around essential elements in lower court that should have denied the moving party (defendants) summary judgment as a matter of law per CR 56?”**

The answer is YES which alone supports denial of summary judgment. Other issues of defendants unethical maneuvering to block discovery also justify summary judgment denial. Summary judgment should be denied or reversed.

DATED this 25th day of July 2016



John R. Wilson, ProSe  
john.wilson.udi@gmail.com  
(206) 854-6851 (cell)

# **EXHIBIT 1**

# **EXHIBIT 1**

## **ACRONYMS and DEFINITIONS**

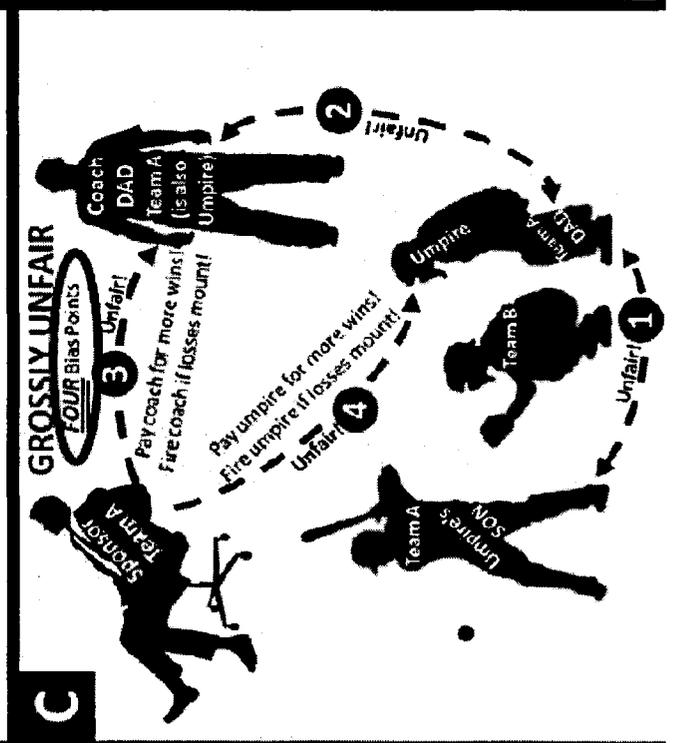
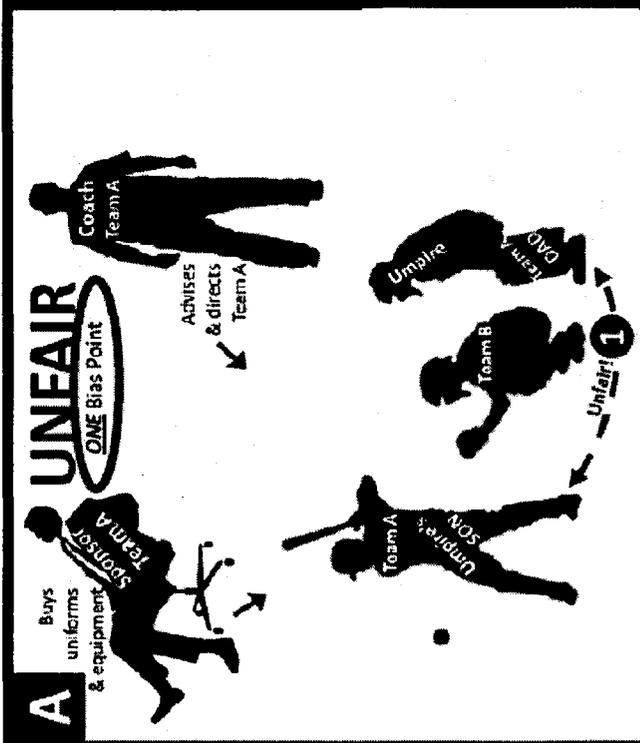
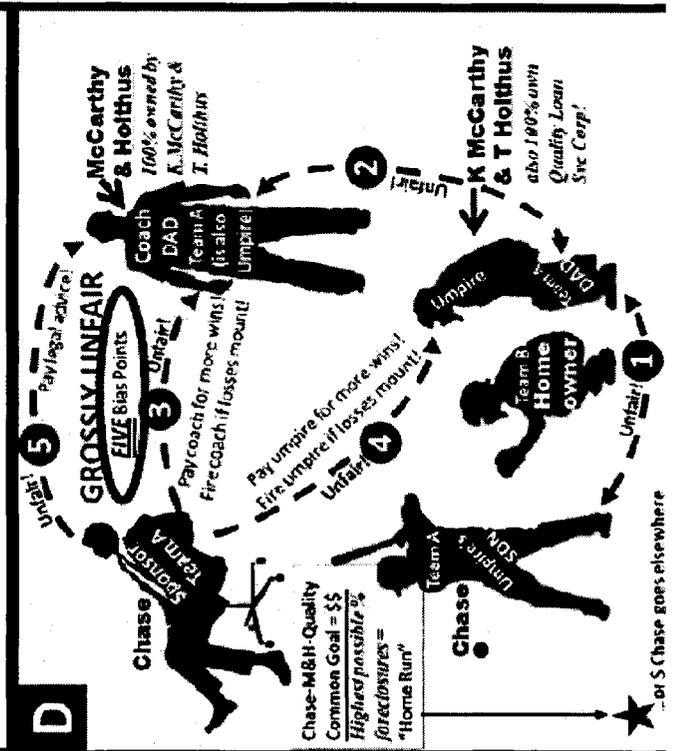
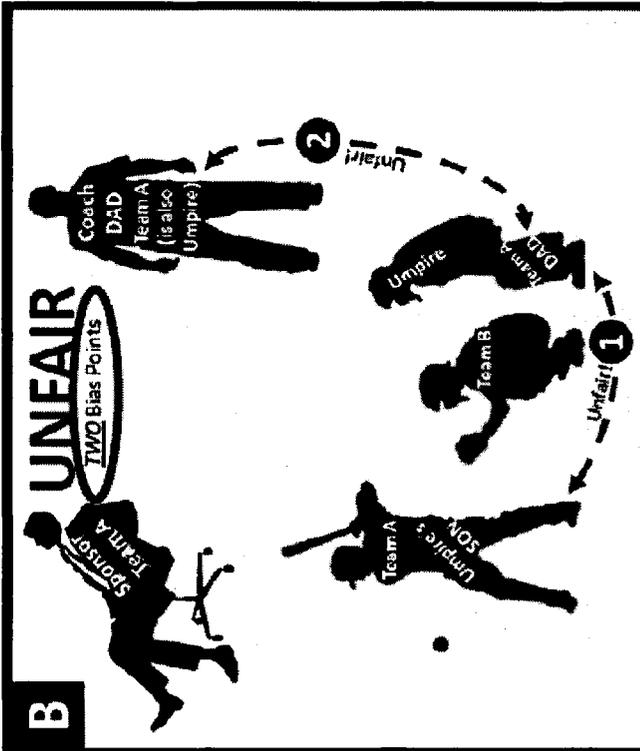
NOTS	Notice of Trustee Sale
NOD	Notice of Default
QLSCW	Quality Loan Services Corp of Washington, a foreclosure trustee located in Poulsbo, WA (2004-2014) now in Seattle (2014- ) owned 100% by attorneys Kevin McCarthy and Thomas Holthus.
QLSC	Quality Loan Services (SanDiego California) headquarters overseeing all multi-state QLS subsidiaries including QLSCW, owned 100% by attorneys Kevin McCarthy and Thomas Holthus.
M&H	McCarthy & Holthus, LLP, exclusively a bank and beneficiary lawfirm two blocks from QLS in SanDiego, owned 100% by attorneys Kevin McCarthy and Thomas Holthus, with a Washington office located in Poulsbo, WA (2004-2014) now in Seattle (March 2014 - present)
RCW	Revised Code of Washington
RPC	Rules Of Professional Conduct

# **EXHIBIT 2**

# BASEBALL ALLEGORY: LEVELS OF UNFAIR PLAY

- A – Pitcher's dad is umpire
- B – Pitcher's dad is umpire and coach
- C – Sponsor secretly pays coach-umpire for more wins
- D – Sponsor business contracts outside create major income for coach-umpire dad

CP 56



# EXHIBIT 3



1 5. The receptionist then asked me to wait for a moment while she went to  
2 the back of the office. She returned shortly with another employee who  
3 identified herself as a McCarthy and Holthus employee (an attorney) who could  
4 receive the document.

5 6. I therefore gave the woman the legal document, obtained her business  
6 card and signed the Affidavit of Service shortly after departure.

7 7. Upon my return to the car, I told John R. Wilson that no one from  
8 Quality Loan Service Corporation was present.

9  
10 I declare under penalty of perjury under the laws of the State of  
11 Washington that the foregoing is true and correct.

12  
13 Dated this Second day of June 2016

14  
15   
16 Brian P. Munson

# **EXHIBIT 4**

# EXHIBIT 3

## Forgery: Sierra Herbert-West Signature Differences

CLERKS PAPERS 193:20-26

(signed on October 6<sup>th</sup> and served on Wilsons 10-9-2015):

15                    12. Following events related to *Klem v. Wash. Mut. Bank*, 176 Wn.2d 771,  
16 295 P.3d 1179 (2013), QLSWA made considerable efforts to fully apprise itself and its  
17 employees and agents of Washington law, particularly with respect to a trustee's duty of good  
18 faith. These efforts include training, compliance reviews, additional staffing and updates to its  
19 processes and forms.

20                    I HEREBY DECLARE THAT THE ABOVE STATEMENT IS TRUE TO THE  
21 BEST OF MY KNOWLEDGE AND BELIEF, AND THAT I UNDERSTAND IT IS MADE  
22 FOR USE AS EVIDENCE IN COURT AND IS SUBJECT TO PENALTY FOR PERJURY.

23                    Dated: October 6<sup>th</sup>, 2015.

24                    By: Sierra Herbert-West  
25                    Sierra Herbert-West  
26                    Location: Seattle, Wa

DECLARATION OF SIERRA HEBERT-WEST IN SUPPORT OF DEFENDANT QUALITY  
LOAN SERVICE CORP. OF WASHINGTON'S MOTION FOR SUMMARY JUDGMENT - 3  
QLSC-L-900189048 000

TOMAS SALYER BAROWAY  
121 SW Morrison Street, Suite 1850  
Portland, Oregon 97204  
Telephone: (503) 894-9900  
Facsimile: (503) 544-7236

Forgery?

CLERKS PAPERS 337:22-26

(Signed [or back-dated] on October 8<sup>th</sup> and Filed in Snohomish County Court on 10-12-2015):

22 I HEREBY DECLARE THAT THE ABOVE STATEMENT IS TRUE TO THE BEST OF MY  
23 KNOWLEDGE AND BELIEF, AND THAT I UNDERSTAND IT IS MADE FOR USE AS  
24 EVIDENCE IN COURT AND IS SUBJECT TO PENALTY FOR PERJURY.

25 Dated: October 8, 2015

26 By: Sierra Herbert-West  
Sierra Herbert-West

DECLARATION OF SIERRA HEBERT-WEST IN SUPPORT OF DEFENDANT QUALITY  
LOAN SERVICE CORP. OF WASHINGTON'S MOTION FOR SUMMARY JUDGMENT - 3  
QLSC-L-900189048 000

TOMAS SALYER BAROWAY  
121 SW Morrison Street, Suite 1850  
Portland, Oregon 97204  
Telephone: (503) 894-9900  
Facsimile: (503) 544-7236

# EXHIBIT 5

# ORAL ARGUMENTS EASEL PLACARD

USED 1-14-2016

Wilsons v. Quality Loan Svcs Corp of WA and McCarthy & Holthus LLP

## RCW 61.24.010

### Trustee, qualifications—Successor trustee...

- (2) ...Only upon recording the appointment of a successor trustee in each county in which the deed of trust is recorded, the successor trustee shall be vested with all powers of an original trustee.
- (3) The trustee or successor trustee shall have no fiduciary duty or fiduciary obligation to the grantor or other persons having an interest in the property subject to the deed of trust.
- (4) The trustee or successor trustee has a duty of good faith to the borrower, beneficiary, and grantor.

## RCW 61.24.030

### Requisites to trustee's sale.

It shall be requisite to a trustee's sale:...

- (6) That prior to the date of the notice of trustee's sale and continuing thereafter through the date of the trustee's sale, the trustee must maintain a street address in this state where personal service of process may be made, and the trustee must maintain a physical presence and have telephone service at such address;

## RCW 61.24.040

### Foreclosure and sale—Notice of sale.

A deed of trust foreclosed under this chapter shall be foreclosed as follows:

- (1) At least ninety days before the sale, the trustee shall:
  - (a) Record a notice in the form described in (f) of this subsection in the office of the auditor in each county in which the deed of trust is recorded;...
  - (f) The notice shall be in substantially the following form:

NOTICE OF TRUSTEE'S SALE...

IX.

[Add Part X to this notice if applicable under RCW 61.24.040(9)]

...., Trustee  
.... }  
.... } Address  
.... }  
.... } Phone

# EXHIBIT 6

# EXHIBIT 6

## LPS (Lender Processing Services) [renamed Black Knight Financial]

SUMMARY (Wikipedia July 10, 2016)

[https://en.wikipedia.org/wiki/Black\\_Knight\\_Financial\\_Services](https://en.wikipedia.org/wiki/Black_Knight_Financial_Services)

**Black Knight Financial Services** ... On January 3, 2014, Fidelity National Financial acquired Lender Processing Services "LPS", renaming it Black Knight.

**HISTORY:** The company formerly known as Lender Processing Services was incorporated in 2007.<sup>[1]</sup> It once served as the mortgage business segment of Fidelity National Information Services, spinning off in 2008 to become a fully independent, publicly traded company on the New York Stock Exchange, trading under the symbol LPS<sup>[2][3]</sup> Jeffery Carbiener, Executive Vice President and Chief Financial Officer of Fidelity National Information Services at the time of the divide, became the first President and Chief Executive Officer of LPS.

LPS became a *publicly traded company in July 2008 and thereafter became involved in several high profile controversies which severely damaged the reputation of the company. The 2010 robo-signing scandal exposed mass forgeries and other unethical behavior that was occurring within the company and continued thereafter.* In addition to the federal government, states such as Nevada began filing legal proceedings against employees of the company. *The consequences of these business practices were featured in an episode of 60 Minutes. Eventually LPS settled with the federal government and other states but not before their brand was destroyed in the marketplace.*

...On January 3, 2014 Lender Processing Services was renamed Black Knight Financial Services after being acquired by Fidelity National Financial, which was ranked #314 among Fortune 500 Companies in 2015.<sup>[8]</sup> LPS product offerings support origination, servicing, portfolio retention and default servicing. LPS' servicing solutions include MSP, a loan-servicing platform, which is used to service approximately 50 percent of all U.S. mortgages by dollar volume.<sup>[9]</sup> The company also provides proprietary data and analytics for the mortgage, real estate and capital markets industries. LPS was a Fortune 500 company headquartered in Jacksonville, Florida, employing approximately 8,000 professionals, although this number diminished significantly with the vast amount of layoffs occurring within the company after becoming Black Knight.<sup>[10]</sup>

# **EXHIBIT 7**

## **EXHIBIT 7**

### **Subject RCWs**

*(Emphasis added with bold, italics & underlines)*

#### **RCW 61.24.010 Trustee, qualifications—Successor trustee**

RCW 61.24.010(2) The trustee may resign at its own election or be replaced by the beneficiary. The trustee shall give prompt written notice of its resignation to the beneficiary. The resignation of the trustee shall become effective upon the recording of the notice of resignation in each county in which the deed of trust is recorded. If a trustee is not appointed in the deed of trust, or upon the resignation, incapacity, disability, absence, or death of the trustee, or the election of the beneficiary to replace the trustee, ***the beneficiary shall appoint a trustee or a successor trustee. Only upon recording the appointment of a successor trustee in each county in which the deed of trust is recorded, the successor trustee shall be vested with all powers of an original trustee.***

RCW 61.24.010(4) The trustee or successor ***trustee has a duty of good faith to the borrower, beneficiary, and grantor.***

#### **RCW 61.24.020 Deeds subject to all mortgage laws—Foreclosure—Recording and indexing—Trustee and beneficiary, separate entities, exception.**

Except as provided in this chapter, a deed of trust is subject to all laws relating to mortgages on real property. A deed conveying real property to a trustee in trust to secure the performance of an obligation of the grantor or another to the beneficiary may be foreclosed by trustee's sale. ***The county auditor shall record the deed as a mortgage and shall index*** the name of the grantor as mortgagor and ***the names of the trustee and beneficiary as mortgagee.***

#### **RCW 61.24.030 Requisites to trustee's sale.**

It ***shall be requisite*** to a trustee's sale:

61.24.030(6) ***That prior to the date of the notice of trustee's sale and continuing thereafter through the date of the trustee's sale, the trustee must maintain a street address in this state*** where personal service of process may be made, ***and the trustee MUST maintain a physical presence and have telephone service at such address;***

61.24.030(7)(b) (b) Unless the trustee has violated his or her duty under RCW 61.24.010(4), the trustee is entitled to rely on the beneficiary's declaration as evidence of proof required under this subsection.

61.24.030(8) That at least thirty days before notice of sale shall be recorded, transmitted or served, written notice of default shall be transmitted by the beneficiary or trustee to the borrower and grantor at their last known addresses by both first-class and either registered or certified mail, return receipt requested, and the beneficiary or trustee shall cause to be posted in a conspicuous place on the premises, a copy of the notice, or personally served on the borrower and grantor. This notice shall contain the following information:

(f)(IX)

**RCW 61.24.040 Foreclosure and sale—Notice of sale.** A deed of trust foreclosed under this chapter shall be foreclosed as follows:

(1) At least ninety days before the sale, or if a letter under RCW 61.24.031 is required, at least one hundred twenty days before the sale, the trustee shall:

(a) Record a notice in the form described in (f) of this subsection in the office of the auditor in each county in which the deed of trust is recorded;

(f) The notice shall be in substantially the following form:

NOTICE OF TRUSTEE'S SALE

IX.

Anyone having any objection to the sale on any grounds whatsoever will be afforded an opportunity to be heard as to those objections if they bring a lawsuit to restrain the sale pursuant to RCW 61.24.130. Failure to bring such a lawsuit may result in a waiver of any proper grounds for invalidating the Trustee's sale.

[Add Part X to this notice if applicable under RCW 61.24.040(9)]

.....  
....., Trustee  
..... }  
..... } Address  
..... }  
..... }  
..... } Phone

## **RCW 19.86 Unfair Business Practices—Consumer Protection.**

### **RCW 19.86.010**

#### **Definitions.**

As used in this chapter:

(1) "Person" shall include, where applicable, natural persons, corporations, trusts, unincorporated associations and partnerships.

(2) "Trade" and "commerce" shall include the sale of assets or services, and any commerce directly or indirectly affecting the people of the state of Washington.

(3) "Assets" shall include any property, tangible or intangible, real, personal, or mixed, and wherever situate, and any other thing of value.

### **RCW 19.86.020**

#### **Unfair competition, practices, declared unlawful.**

Unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful.

### **RCW 19.86.030**

#### **Contracts, combinations, conspiracies in restraint of trade declared unlawful.**

Every contract, combination, in the form of trust or otherwise, or conspiracy in restraint of trade or commerce is hereby declared unlawful.

### **RCW 19.86.090**

#### **Civil action for damages—Treble damages authorized—Action by governmental entities.**

Any person who is injured in his or her business or property by a violation of RCW 19.86.020, 19.86.030, 19.86.040, 19.86.050, or 19.86.060, or any person so injured because he or she refuses to accede to a proposal for an arrangement which, if consummated, would be in violation of RCW 19.86.030, 19.86.040, 19.86.050, or 19.86.060, may bring a civil action in superior court to enjoin further violations, to recover the actual damages sustained by him or her, or both, together with the costs of the suit, including a reasonable attorney's fee. In addition, the court may, in its discretion, increase the award of damages up to an amount not to exceed three times the actual damages sustained: PROVIDED, That such increased damage award for violation of RCW 19.86.020 may not exceed twenty-five thousand dollars: PROVIDED FURTHER, That such person may bring a civil action in the district court to recover his or her actual damages, except for damages which exceed the amount specified in

RCW 3.66.020, and the costs of the suit, including reasonable attorney's fees. The district court may, in its discretion, increase the award of damages to an amount not more than three times the actual damages sustained, but such increased damage award shall not exceed twenty-five thousand dollars. For the purpose of this section, "person" includes the counties, municipalities, and all political subdivisions of this state.

### **RCW 19.86.093**

#### **Civil action—Unfair or deceptive act or practice—Claim elements.**

In a private action in which an unfair or deceptive act or practice is alleged under RCW 19.86.020, a claimant may establish that the act or practice is injurious to the public interest because it:

- (1) Violates a statute that incorporates this chapter;
- (2) Violates a statute that contains a specific legislative declaration of public interest impact; or
- (3)(a) Injured other persons; (b) had the capacity to injure other persons; or (c) has the capacity to injure other persons.

**CERTIFICATE OF SERVICE**

I, Marilyn Harris, certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct:

1. At all times hereinafter mentioned, I am a citizen of the United States of America, a resident of the State of Washington, over the age of eighteen years, not a party to the above-entitled action, and competent to be a witness herein.

2. That on the 25th day of July 2016, I caused to be served a true and correct copy of *Opening Brief: Wilsons v Quality Loan Services Corp of Washington and McCarthy & Holthus, LLP*

\_\_\_\_\_ to  
defendants in the above title matter by causing it to be delivered to:

Joseph McIntosh McCarthy & Holthus 108 1 <sup>st</sup> Avenue South – Ste 300 Seattle, WA 98104	<input type="checkbox"/> Facsimile <input type="checkbox"/> Express Mail <input checked="" type="checkbox"/> U.S. First Class Mail <input type="checkbox"/> Hand delivery <input type="checkbox"/> Legal Messenger Service <input checked="" type="checkbox"/> Electronic Service
Quality Loan Service Corp of Washington c/o Kathryn Salyer Tomasi Salyer Baroway 121 SW Morrison Street – Ste 1850 Portland, Oregon 97204	<input type="checkbox"/> Facsimile <input type="checkbox"/> Express Mail <input checked="" type="checkbox"/> U.S. First Class Mail <input type="checkbox"/> Hand delivery (Daniel Iller) <input type="checkbox"/> Legal Messenger Service <input checked="" type="checkbox"/> Electronic Service

DATED 25<sup>th</sup> day of July, 2016 at

Woodinville, Washington.

Signed Marilyn Harris

FILED  
COURT OF APPEALS DIV 1  
STATE OF WASHINGTON  
2016 JUL 26 AM 10:15