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3 COURT OF APPEALS OF THE STATE OF WASHINGTON,  
4 DIVISION II

5  
6 **CASE No. 39670-0-II**

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8 SUPERIOR COURT OF THE STATE OF WASHINGTON  
9 IN COUNTY OF CLARK

10 Case No.: 01-2-02693-7

11 ROSE HOWELL, Appellant,  
12 V.

13 ARLIS J. PLOTNER, as the personal representative of the  
14 ESTATE OF KEITH WALTER PLOTNER,  
15 DECEASED,  
16 Respondent

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17 **APPELLANT'S BRIEF**  
18 **AND**  
19 **CERTIFICATE OF SERVICE**

---

20 Rose Howell, Pro Se

21  
22 Appellant,  
23 Rose Howell  
24 Pro Se Appellant  
25 9504 NE 5<sup>th</sup> Street  
26 Vancouver, WA 98664  
27 360-953-0798

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24 ^ Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 256 (1986): 14, 15, 18,  
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1 ^ Anderson, 477 U.S. at 255; USX Corp v. Liberty Mut. Ins. Co., Nos. 04-  
2 1277 & 04-1300, 2006 U.S. App. LEXIS 8702, at \*12-13 (3d Cir. Apr. 10,  
3 2006): 14, 28, 33, 36, 37, 44

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5 ^ Calotex Corp. v. Catrett, 477 U.S. 317, 324 (1986): 6, 8, 10, 11, 12, 17,  
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8 ^ Chemical Bank v. Dippolito, 897 F. Supp. 221, 224 (E.D. Pa. 1995): 5,  
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12  
13 ^ In re CWM Chemical Serv., Docket No. TSCA-PCB-91-0213, 1995  
14 TSCA LEXIS 13, TSCA Appeal 93-1 (EAB, Order on Interlocutory  
15 Appeal, May 15, 1995): 31, 34

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17 ^ Davis v. Hutchins, 321 F.3d 641 (7<sup>th</sup> Cir, 2003): 6, 8, 11, 38

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19 ^ Davis v. Immediate Med. Serv., Inc. (1997), 80 Ohio St.3d 10, 14-15, 684  
20 N.E.2d 292 : 8, 12, 13, 19, 23, 26, 33, 36, 40, 48, 49

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22 ^ Durham v. Florida East Coast Ry. Co., 385 F.2d 366, 368 (5<sup>th</sup> Cir. 1967):  
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25 (2007): 13, 19, 30, 40, 46, 48, 49

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27 ^ Farmers & Merchants State & Sav. Bank v. Raymond G. Barr Ent., Inc.  
28 (1982), 6 Ohio App.3d 43, 43-44, 452 N.E.2d 521: 23, 25, 33, 36, 40, 46

1 ^ Harmon Electronics, Inc., RCRA No. VII-91-H-0037, 1993 RCRA  
2 LEXIS 247 (August 17, 1993): 31, 34  
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4 ^ Idahosa v. King County, 133 Wn. App. 390 (2002): 14, 32, 36  
5 ^ Mc Donald v. Berry (1992), 84 Ohio App.3d 6, 9-10, 616 N.E.2d 248: 23,  
6 25, 33, 36, 40, 46  
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8 ^ Miller v. Lint, supra: 6, 8, 10, 11, 13, 20, 21, 22, 24, 25, 29, 33, 34, 35,  
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11 ^ Munden v. Courser, 155 N.C. App. 217, 218-19, 574 S.E.2d 110, 111-12  
12 (2002): 14  
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14 ^ National Hockey League v. Metropolitan Hockey Club, Inc., 427 U.S.  
15 639, 96 S. Ct. 2778, 49 L.Ed.2d 747 (1976): 6, 11, 35, 41  
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17 ^ Perry v. Hamilton, 51 Wn. App. 936, 938, 756 P.2d 150 (1988): 6, 16,  
18 18, 21, 30, 32, 36, 39, 44, 49, 50  
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20 ^ Philips Medical Systems International, B.V. v. Bruetman, 8 F.3d 600 (7<sup>th</sup>  
21 Cir. 1993): 35, 41  
22  
23 ^ Shaw v. Martin, 733 F.2d 304, 308 (4<sup>th</sup> Cir. 1984): 9  
24  
25 ^ Slaughter, 162 N.C. App. At 462-63, 591 S.E.2d at 581-82 (2004): 15,  
26 19, 30, 40, 45, 48, 49  
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28 ^ Syllabus Point 2, McDaniel v. Romano, 155 W. Va. 875, 190 S.E.2d 8  
29 (1972): 12, 26, 34  
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32 ^ Syllabus Point 3, Davis v. Sheppe, supra: 12, 26, 34

1 ^ Turner v. Kohler, 54 Wn. App. 688, 693, 775 P.2d 474 (1989): 6, 8, 13,

2 15, 18, 21, 30, 32, 36, 40, 44, 49, 50

3 ^ Turner v. Kohler, supra: 6, 13, 15, 29, 43, 47, 49

4 ^ Union Planters Nat'l Bank of Memphis v. Markowitz, 468 F. Supp. 529,

5 533 (W.D. Tenn. 1979): 25, 36, 39

6 ^ United States v. DeFrantz, 708 F.2d 310 (7<sup>th</sup> Cir. 1983): 11, 16, 17, 38

7 ^ United States v. Grinnell Corp., 384 U.S. 563, 583, 86 S. Ct. 1698, 1710,

8 16 L.Ed.2d 778 (1966): 9, 38

9 **CONSTITUTION AND STATUTES; PAGE:**

10 ^ Article VI, Supremacy Clause: 10,

11 ^ Sixth Amendment: 9, 19, 27, 41

12 ^ Fourteenth Amendment: 9, 19, 27, 41

13 **III. INTRODUCTION:**

14 This review involves an eleven year affirmative default and default  
15 judgment, pursuant to CR 54, CR 55 stemming from a rear-end collision  
16 caused by the reckless irresponsible negligence of Keith Plotner, March 3,  
17 1999; <sup>1</sup> Chemical Bank v. Dippolito, 897 F. Supp. 221, 224 (E.D. Pa.

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26 <sup>1</sup> The Plotner filed late answers ["CP" 2, 14, 20, 91], not upon motion and without  
27 demonstration of excusable neglect required by CR 6 rendering the Plotner in default  
28 August 7, 2001 powerless to respond and defend, pursuant to CR 4, CR 55; Davis v.  
29 Immediate Med. Serv., Inc. (1997), 80 Ohio St.3d 10, 14-15, 684 N.E.2d 292. The courts  
30 discretion is limited, once the filing deadline passes, solely to acknowledge the Plotner  
31 upon motion and demonstration of excusable neglect required by CR 6; Farmers &  
32 Merchants State & Sav. Bank v. Raymond G. Barr Ent., Inc. (1982), 6 Ohio App.3d 43,

1 1995). The end result of eleven years of deliberate manifested heinous  
2 malicious criminal injustice, the courts personal abuse of discretion,  
3 unlawful political policies and fraud produced economic and noneconomic  
4 damages in excess of any life time occurrence(s).  
5

6 The court <sup>2</sup> acknowledged Rose Howell is entitled default  
7 judgment as a matter of law rendered forthwith, pursuant to CR 50, CR 56  
8 Calotex Corp. v. Catrett, 477 U.S. 317, 324 (1986); Miller v. Lint, supra.  
9 Motion for judgment as a matter of law, pursuant to CR 50, CR 56 is  
10 pending appellate mandate. The courts abuse of discretion refused to  
11 penalize the recalcitrant Plotner; Davis v. Hutchins, 321 F.3d 641 (7<sup>th</sup> Cir,  
12 2003); National Hockey League v. Metropolitan Hockey Club, Inc., 427  
13 U.S. 639, 96 S. Ct. 2778, 49 L.Ed.2d 747 (1976).  
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20 43-44, 452 N.E.2d 521; Mc Donald v. Berry (1992), 84 Ohio App.3d 6, 9-10, 616 N.E.2d  
21 248; Miller v. Lint, supra. The Plotner are in default, obligated to render forthwith an  
22 affirmative default judgment, pursuant to CR 50, CR 54, CR 55, CR 56; Calotex Corp. v.  
23 Catrett, 477 U.S. 317, 324 (1986); Chrysler Credit Corp. v. Joseph L. Macino, 710 F.2d  
24 363 (7<sup>th</sup> Cir. 1983). ["CP" 2, 3, 14, 20, 91] assured the Plotner have [never legally  
25 appeared, plead or defended].

26 <sup>2</sup> CR 56; provides summary judgment, default judgment as a matter of law shall be  
27 rendered forthwith if pleadings, motions, affidavits, if any, show there is no genuine issue  
28 as to any material fact and Rose Howell is entitled judgment as a matter of law. The court  
29 rendered summary judgment ["CP" 343] admitted Rose Howell is entitled default  
30 judgment as a matter of law; Calotex Corp. v. Catrett, 477 U.S. 317, 324 (1986), entered  
31 memorandum ["CP" 406] admitted ["EX" 9] met the burden of proof; Adickes v. Kress,  
32 398 U.S. 144, 157 (1970). July 17, 2009 ["CP" 422] the court failed to enter default  
judgment, preserving fraud manifested injustice, affected substantial rights.

1 The issue before the Court of Appeals is judgment as a matter of  
2 law, pursuant to CR 50, CR 56. The court denied default, declared the  
3 Plotner had appeared, pled and defended. The Plotner filed late answers  
4 ["CP" 2, 3, 14, 20, 91], have [never legally appeared, plead or defended],  
5 incapable demonstrating excusable neglect required by CR 6, powerless to  
6 respond and defend this default; Miller v. Lint, supra. The courts abuse of  
7 discretion affected substantial rights. The Verbatim Report provided by  
8 Allred Transcription is the second fraudulent transcribed report, rendering  
9 it useless.

#### 13 IV. ASSIGNMENT OF ERROR:

14 The trial court erred when it:

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16 1) **The court erred** March 7, 2008 not rendering an accelerated order  
17 of default and Rose Howell default judgment. The court abused its  
18 discretion set-aside default <sup>3</sup> without good cause refused to acknowledge  
19 the affirmative prima facie case met the burden of proof; Adickes v.  
20 Kress., 398 U.S. 144, 157 (1970), affected substantial rights permitted the

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24 <sup>3</sup> The Plotner filed late answers ["CP" 2, 15, 20, 91], accepted default and default  
25 judgment ["CP" 3] August 10, 2001. The Plotner have [never legally appeared, pled or  
26 defended], incapable demonstrating excusable neglect required by CR 6; Davis v.  
27 Immediate Med. Serv., Inc. (1997), 80 Ohio St.3d 10, 14-15, 684 N.E.2d 292, powerless  
28 to respond and defend, pursuant to CR 4, CR 55. The courts discretion is limited, once  
the filing deadline passé; Farmers & Merchants State & Sav. Bank v. Raymond G. Barr  
Ent., Inc. (1982), 6 Ohio App.3d 43, 43-44, 452 N.E.2d 521; Mc Donald v. Berry (1992),  
84 Ohio App.3d 6, 9-10, 616 N.E.2d 248; Miller v. Lint, supra.

1 Plotner respond and defend powerless to demonstrate excusable neglect  
2 required by CR 6. The court ordered trial on the verbal request of Angela  
3 Stewart permitted the Plotner <sup>1 7</sup> respond and defend contrary to law,  
4 accepted the late answers, as if, the Plotner have presented a defense and a  
5 motion to set-aside default. The court manifested injustice presenting Rose  
6 Howell the pro se treatment. The Plotner have [never legally appeared,  
7 pled or defended] <sup>1</sup> are incapable demonstrating excusable neglect  
8 required by CR 6. The Plotner are obligated to pay an <sup>3 7 8</sup> affirmative  
9 default judgment forthwith; Miller v. Lint, supra ; Calotex Corp. v. Catrett,  
10 477 U.S. 317, 324 (1986)  
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14 **2) The court erred** April 11, 2008 issued an interlocutory Order  
15 Denying Default [“CP” 173]. The court abused its discretion, affected  
16 substantial rights, issued the order <sup>1 3 6</sup> denying default, declared the  
17 Plotner have appeared, pled and defended, declared the order would be  
18 viewed as a discretionary review. The courts discretion is limited, the  
19 Plotner are absent excusable neglect required by CR 6, powerless to  
20 respond and defend; Turner v. Kohler, 54 Wn. App. 688, 693, 775 P.2d  
21 474 (1989). The Plotner late answers assured the Plotner have [never  
22 legally appeared, pled or defended].Rose Howell as a matter of right and  
23 law is entitled default and default judgment rendered forthwith; Davis v.  
24 Hutchins, 321 F.3d 641 (7<sup>th</sup> Cir, 2003).  
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1 **3) The court erred** ordering trial. The court ordered trial permitting  
2 the Plotner respond and defend <sup>1 7</sup> contrary to law, failing to acknowledge  
3 the courts discretion is limited, powerless to recognize the Plotner absent  
4 the ability to demonstrate excusable neglect required by CR 6; Davis v.  
5 Immediate Med. Serv., Inc. (1997), 80 Ohio St.3d 10, 14-15, 684 N.E.2d  
6 292. The court abused its discretion permitted the Plotner respond and  
7 defend affecting substantial rights, the Plotner have [never legally  
8 appeared, plead or defended]. Trial requires both parties the ability to  
9 respond and defend.  
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13 **4) The court erred** denying Affidavit of Prejudice served timely  
14 under Sec. 144 [“CP” 196, 197]; United States v. Grinnell Corp., 384 U.S.  
15 563, 583, 86 S. Ct. 1698, 1710, 16 L.Ed.2d 778 (1966). The courts  
16 prejudice is personal rather than judicial due to extrajudicial sources;  
17 <sup>4</sup>Shaw v. Martin, 733 F.2d 304, 308 (4<sup>th</sup> Cir. 1984) finding no limits to its  
18 abuse of discretion before, during and after trial. The courts abuse of  
19 discretion affected <sup>4 5</sup> substantial rights refused to admit the courts  
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25 <sup>4</sup> November 15, 2001 ex-parte resulted eleven years of heinous, malicious criminal  
26 injustice generating a array of fraud, produced Rose Howell eleven years manifest  
27 criminal injustice, secondary life altering injuries intended to bring into being the death of  
28 Rose Howell. The courts personal prejudice rendered decisions protecting fraud and a  
29 fraudulent holding company established using Rose Howell personal identity and life  
30 altering injuries generated from unlawful political policies, alternatives to litigation;  
31 Article VI, Supremacy Clause.  
32

1 discretion is limited, the Plotner are absent excusable neglect required by  
2 CR 6, therefore, powerless to respond and defend.

3 **5) The court erred** ordering a GAL. The GAL ["CP" 249, 259]  
4 intended to waste time,<sup>5 9 10</sup> violated sixth and fourteenth amendment  
5 rights to self-representation. The pro se treatment delivered a very bizarre  
6 letter responded to ["CP" 283, 284]. December 5, 2008, the court declared  
7 Rose Howell the pro se attorney of record ["CP" 285], vacating the GAL.  
8 The court disregarded the United States Constitution supersedes state law  
9 violated<sup>9 10</sup> Article VI, Supremacy Clause.

10 **6) The court erred** Denying this affirmative Default and Rose  
11 Howell Default Judgment as a Matter of Law, pursuant to CR 50, CR 56.  
12 This is an affirmative default commenced August 7, 2001 with a late  
13 answer not upon motion and demonstration of excusable neglect required  
14 by CR 6; Miller v. Lint, supra. The courts discretion is limited; powerless,  
15 the Plotner absent excusable neglect required by CR 6. The courts abuse  
16 of discretion affected substantial rights,<sup>8</sup> acknowledged Rose Howell is

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24 <sup>5</sup> The court ordered GAL intended to stall through the SEC hold implemented on Safeco  
25 Corporation trading under Liberty Mutual September 18, 2008 through December 18,  
26 2008, the first quarter trading. Safeco Corporation announced the sale to Liberty Mutual  
27 May of 2008, just after motion for default was filed and denied ["CP" 173]. Liberty  
28 Mutual declared this default as a liability to its stockholders until the courts personal  
29 prejudice entered a fraudulent judgment July 17, 2009 ["CP" 422]. The GAL violated  
30 Sixth and Fourteenth Amendment Rights to self-representation, created the pro se lien,  
31 affected substantial rights intended to stall, waste time; Idahosa v. King County, 133 Wn.  
32 App. 390 (2002)

1 entitled default judgment <sup>6</sup> as a matter of law, pursuant to CR 56, .  
2 acknowledged Rose Howell met the burden of proof [“CP” 406] abused its  
3 discretion contradicted itself denying Rose Howell post-judgment motion,  
4 pursuant to CR 50, CR 56; Calotex Corp. v. Catrett, 477 U.S. 317, 324  
5 (1986); Chrysler Credit Corp. v. Joseph L. Macino, 710 F.2d 363 (7<sup>th</sup> Cir.  
6 1983). The courts abuse of discretion failed to recognize the Plotner late  
7 answers assured the Plotner default and an affirmative default judgment  
8 having [never legally appeared, pled or defended] rendering the Plotner  
9 flagrant disrespect for the courts authority penalized; Davis v. Hutchins,  
10 321 F.3d 641 (7<sup>th</sup> Cir, 2003); United States v. DeFrantz, 708 F.2d 310 (7<sup>th</sup>  
11 Cir. 1983).

12 **7) The court erred denying Rose Howell Motion for Summary**  
13 **Judgment rendering default judgment as a matter of law, pursuant to CR**  
14 **50, CR 56. The court acknowledged this affirmative default judgment was**  
15 **well presented prima facie [“CP” 2, 3, 14, 20, 91, 78, 79, 80, 95, 96, 97,**  
16 **304, 305, 321, 322] supported by extensive evidentiary support [“EX” 9],**  
17 **[“EX” BB 1-47], [“A-AW] finding there is no genuine issues as to any**

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25 <sup>6</sup> The Plotner filed late answers have [never legally appeared, plead or defended],  
26 incapable demonstrating excusable neglect required by CR 6, powerless to respond and  
27 defend, pursuant to CR 4, CR 55. The courts discretion is limited, powerless to recognize  
28 the Plotner. The Plotner are responsible for an affirmative default and default judgment,  
29 pursuant to CR 54, CR 55; Miller v. Lint, supra; Chrysler Credit Corp. v. Joseph L.  
30 Macino, 710 F.2d 363 (7<sup>th</sup> Cir. 1983). The courts personal prejudice refused to penalize  
31 the recalcitrant Plotner; United States v. DeFrantz, 708 F.2d 310 (7<sup>th</sup> Cir. 1983).  
32

1 material facts, the merits of the case warrant judgment as a matter of law  
2 forthwith, pursuant to CR 56. The court acknowledged Rose Howell is  
3 entitled default judgment as a matter of law, pursuant to CR 56, the courts  
4 abuse of discretion refused to render <sup>2 3 6 7</sup> default judgment as a matter of  
5 law forthwith, pursuant to CR 50, CR 56; Calotex Corp. v. Catrett, 477  
6 U.S. 317, 324 (1986) ; Miller v. Lint, supra. The courts abuse of discretion  
7 refused to penalize the Plotner; National Hockey League v. Metropolitan  
8 Hockey Club, Inc., 427 U.S. 639, 96 S. Ct. 2778, 49 L.Ed.2d 747 (1976).

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11 **8) The court erred** accepting the Plotner four late answers and notice  
12 of appearance [“CP” 2, 3, 14, 20, 91]. The court abused its limited  
13 discretion, powerless to recognize the Plotner late answers. The Plotner  
14 are absent the ability to demonstrate excusable neglect required by CR 6;  
15 Davis v. Immediate Med. Serv., Inc. (1997), 80 Ohio St.3d 10, 14-15, 684  
16 N.E.2d 292. The courts abuse of discretion accepted <sup>1 6 7</sup> late answers, the  
17 Plotner have [never legally appeared, pled or defended]; Syllabus Point 2,  
18 McDaniel v. Romano, 155 W. Va. 875, 190 S.E.2d 8 (1972); Syllabus  
19 Point 3, Davis v. Sheppe, supra. The notice of appearance solely provided  
20 a notice of default before default judgment is entered it failed to provide  
21 excusable neglect required by CR 6 or a defense. The late answer [“CP”  
22 91] was accepted as a motion to set-aside default without good cause  
23 affecting substantial rights. The Plotner are obligated to render an  
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1 affirmative default judgment as a matter of law, pursuant to CR 50, CR  
2 56; Calotex Corp. v. Catrett, 477 U.S. 317, 324 (1986).

3 **9) The court erred** failing to recognize the court discretion is limited  
4 after the filing deadline passed. The courts inability to find limits to the  
5 courts discretion permitted the Plotner respond and defend contrary to law  
6 affected substantial rights, failed to recognize the courts discretion is  
7 powerless to recognize the Plotner absent the ability to demonstrate  
8 excusable neglect required by CR 6. The courts abuse of discretion  
9 manifested injustice affected substantial rights in a default eleven years  
10 matured, set-aside default without good cause, the Plotner have [never  
11 legally appeared, pled or defended]; Miller v. Lint, supra.

12 **10) The court erred** failed to recognize the Plotner lack the necessary  
13 excusable neglect required by CR 6. The Plotner filed a late answer not  
14 upon motion without demonstration of excusable neglect required by CR  
15 6, the Plotner lack the excusable neglect required by CR 6 necessary to  
16 respond and defend; the courts discretion is not permitted to recognize the  
17 Plotner; Davis v. Immediate Med. Serv., Inc. (1997), 80 Ohio St.3d 10,  
18 14-15, 684 N.E.2d 292. The Plotner have [never legally appeared, pled or  
19 defended]. The court abused its discretion set-aside default without good  
20 cause permitted the Plotner respond and defend contrary to law  
21 manifesting injustice affected substantial rights; Turner v. Kohler, 54 Wn.  
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1 App. 688, 693, 775 P.2d 474 (1989); Earth Movers, Inc. v. Thomas, 182  
2 N.C. App. 329, 641 S.E.2d 751 (2007).

3 **11) The court erred** issuing Memorandum RE: Default December 5,  
4 2008. The courts memorandum [“CP” 286] failed fact and law failed to  
5 acknowledge the material facts and merits presented prima facie raising a  
6 genuine issue on proceedings and the courts decisions in future and past  
7 proceedings; Turner v. Kohler, supra. The courts discretion is limited. The  
8 Plotner have [never legally appeared, pled or defended], absent excusable  
9 neglect required by CR 6, are in default obligated to pay affirmative  
10 default judgment, pursuant to CR 50, CR 56. The courts memorandum  
11 [“CP” 286] failing fact, law, merits presented prima facie was rendered the  
12 first quarter of Safeco Corporation trading as Liberty Mutual intended to  
13 waste time; Idahosa v. King County, 133 Wn. App. 390 (2002) piecemeal  
14 the appeal; Munden v. Courser, 155 N.C. App. 217, 218-19, 574 S.E.2d  
15 110, 111-12 (2002).

16 **12) The court erred** April 10, 2009 ordering Summary Judgment.  
17 The court rendered the Plotner summary judgment, the Plotner have  
18 [never legally appeared, pled or defended]. The Plotner order lacks legal  
19 authority absent the ability to demonstrate excusable neglect required by  
20 CR 6; Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 256 (1986). The  
21 courts discretion is limited, powerless to recognize the Plotner and their  
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1 orders. The court rendered summary judgment solely acknowledged Rose  
2 Howell is entitled default judgment as a matter of law meeting the courts  
3 stipulation [“EX” 9]; Anderson, 477 U.S. at 255; USX Corp v. Liberty  
4 Mut. Ins. Co., Nos. 04-1277 & 04-1300, 2006 U.S. App. LEXIS 8702, at  
5 \*12-13 (3d Cir. Apr. 10, 2006). [“EX” 9] was video recorded providing  
6 the perpetual testimony meeting the burden of proof; Adickes v. Kress.,  
7 398 U.S. 144, 157 (1970). The court abused its discretion manifesting  
8 injustice affecting substantial rights refused to penalize the Plotner.  
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11 **13) The court erred** May 1, 2009 entering the Plotner Order Quashing  
12 Rose Howell Out-of-State Deposition [“CP 372]. The court issued the  
13 Plotner order [“CP” 372] quashing Rose Howell deposition, the Plotner  
14 absent the ability to demonstrate excusable neglect required by CR 6, the  
15 order absent legal authority; Anderson v. Liberty Lobby, Inc., 477 U.S.  
16 242, 256 (1986). The courts discretion is limited, powerless to recognize  
17 the Plotner orders. The court abused its discretion affected substantial  
18 rights manifesting injustice; Turner v. Kohler, 54 Wn. App. 688, 693, 775  
19 P.2d 474 (1989) quashing testimony; Slaughter, 162 N.C. App. At 462-63,  
20 591 S.E.2d at 581-82 (2004) Rose Howell is the sole party capable of  
21 responding and defending this default. The pre-scheduled deposition May  
22 6, 2009 [“EX” 9] [did not] delay court proceedings, the court granted an  
23 extension not required, trial proceeded as scheduled May 26 and 27, 2009.  
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1 The perpetual testimony was provided by Rose Howell attending  
2 neurologist, past and present ["EX" 9], the sole genuine issue presented on  
3 summary judgment.  
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5 **14) The court erred** issuing Memorandum of Decision June 8, 2009.  
6 June 8, 2009 ruling ["CP" 406] failed fact and law, pursuant to CR 52;  
7 Turner v. Kohler, supra. The court failed to acknowledge the material fact  
8 and merits of the case. The court acknowledged Rose Howell is injured  
9 accepted ["EX" 9] met the burden of proof; Adickes v. Kress., 398 U.S.  
10 144, 157 (1970) failed to admit the Plotner are in default responsible to  
11 render an affirmative default judgment, pursuant to CR 50, CR 56;  
12 Chemical Bank v. Dippolito, 897 F. Supp. 221, 224 (E.D. Pa. 1995)  
13 affecting substantial rights. The Plotner have [never legally appeared, pled  
14 or defended]. The courts abuse of discretion consistently fails to penalize  
15 the recalcitrant Plotner with the law; United States v. DeFrantz, 708 F.2d  
16 310 (7<sup>th</sup> Cir. 1983).  
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21 **15) The court erred** July 17, 2009 entering the Plotner findings of fact  
22 and conclusions of law ["CP" 421]. The Plotner are absent the excusable  
23 neglect required by CR 6 to permit a response or defense. The courts  
24 discretion is limited powerless to recognize the Plotner and their findings  
25 of fictitious nature, the Plotner have [never legally appeared, pled or  
26 defended]. The Plotner findings lack legal authority without demonstration  
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1 of excusable neglect required by CR 6. The court manifested by abuse of  
2 discretion; Perry v. Hamilton, 51 Wn. App. 936, 938, 756 P.2d 150 (1988)  
3 affected substantial rights rendering finding failing fact and law.  
4

5 **16) The court erred** July 17, 2009 entering the Plotner Judgment.

6 The Plotner judgment lacks legal authority, the Plotner absent the  
7 excusable neglect required by CR 6 to respond and defend. The court  
8 discretion is limited, powerless to recognize the Plotner and their fictitious  
9 judgment generated by fraud, pursuant to CR 60. The court abused its  
10 discretion rendered a fraudulent judgment, pursuant to CR 60. The Plotner  
11 have [never legally appeared, pled or defended]. The Plotner are in default  
12 responsible for an affirmative default judgment. The courts abuse of  
13 discretion manifested injustice affected substantial rights, pursuant to CR  
14 50, CR 56; Calotex Corp. v. Catrett, 477 U.S. 317, 324 (1986). The court  
15 affirmed Rose Howell is entitled default judgment, pursuant to CR 50, CR  
16 56 refused to penalize the recalcitrant Plotter with the law.  
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21 **17) The court erred** August 7, 2009 refused Rose Howell post-  
22 judgment motions, entered the Plotner Order on Post-Judgment Motions.

23 The courts abused its discretion, the Plotner have <sup>1 2 8</sup> [never legally  
24 appeared, pled or defended] incapable of penalizing the recalcitrant  
25 Plotner; United States v. DeFrantz, 708 F.2d 310 (7<sup>th</sup> Cir. 1983). The court  
26 acknowledged Rose Howell is entitled default judgment as a matter of law  
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1 met the burden of proof abused its discretion contradicted itself denied  
2 post-judgment motions, motion for judgment as a matter of law, pursuant  
3 to CR 50 affected substantial rights.  
4

5 The court entered the Plotner post-judgment motions generated by  
6 fraud, pursuant to CR 60. The Plotner orders lack legal authority, the  
7 Plotner absent the excusable neglect required by CR 6 to permit the courts  
8 discretion to recognize the Plotner; Anderson v. Liberty Lobby, Inc., 477  
9 U.S. 242, 256 (1986). The Plotner have [never legally appeared, pled or  
10 defended]. The courts abuse of discretion finding no limits to its discretion  
11 renders the Plotner orders into court record contrary to law, manifesting  
12 injustice, affected substantial rights, pursuant to CR 50, CR 56.  
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16 **18) The court erred** permitting the Plotner respond and defend,  
17 pursuant to CR 55. The Plotner are absent the excusable neglect required  
18 by CR 6 to permit the courts discretion to recognize the Plotner. The  
19 courts discretion is limited, powerless to permit the Plotner respond and  
20 defend. The Plotner have [never legally appeared, pled or defended]. The  
21 courts limited discretion is powerless to recognize the Plotner without  
22 demonstration of excusable neglect required by CR 6, powerless to permit  
23 the Plotner respond and defend. The court abused its discretion permitting  
24 the Plotner respond and defend manifesting injustice affected substantial  
25 rights, rendered the Plotner orders [“CP” 173, 249, 259, 286, 343, 372,  
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1 406, 421, 422, 446, 486, 487], created the pro se lien ["CP" 480], denied  
2 the validity the pro se lien ["CP" 486, 487]; Perry v. Hamilton, 51 Wn.  
3 App. 936, 938, 756 P.2d 150 (1988); Turner v. Kohler, 54 Wn. App. 688,  
4 693, 775 P.2d 474 (1989). .

6 **19) The court erred** issuing the Plotner orders. The Plotner late  
7 answers assured the Plotner have <sup>1</sup> [never legally appeared, pled or  
8 defended], the Plotner orders lack legal authority, absent the ability to  
9 demonstrate the excusable neglect required by CR 6; Davis v. Immediate  
10 Med. Serv., Inc. (1997), 80 Ohio St.3d 10, 14-15, 684 N.E.2d 292. The  
11 courts discretion does not permit the court to recognize the Plotner and the  
12 Plotner orders ["CP" 173, 249, 259, 286, 343, 372, 406, 421, 422, 446,  
13 486, 487]. The courts abuse of discretion rendering fraudulent orders  
14 manifested injustice affected substantial rights intended to avoid an  
15 affirmative default judgment wasting time and money producing the pro se  
16 lien; Slaughter, 162 N.C. App. At 462-63, 591 S.E.2d at 581-82 (2004);  
17 Earth Movers, Inc. v. Thomas, 182 N.C. App. 329, 641 S.E.2d 751 (2007).

22 **20) The court erred** Denying Rose Howell Pro Se Lien, pursuant to  
23 RCW 60.40.010, Sixth and Fourteenth Amendments. The pro se lien is  
24 self-representation costs incurred Rose Howell is responsible. Pursuant to  
25 RCW 60.40.010 the <sup>9</sup> <sup>10</sup> pro se lien is superior to all other liens, providing  
26 the sole value to the resolution of this eleven year default. Sixth and  
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1 fourteenth amendments rights to self-representation provide a  
2 constitutional right to reimbursement, the United States Constitution  
3 supersedes state law. The court declared Rose Howell the pro se attorney  
4 of record December 5, 2008. The courts personal abuse of discretion  
5 interprets the RCW 60.40.010 defines a party must be bar licensed to  
6 incurred litigation costs, the Plotner created the pro se lien attempting to  
7 dodge an affirmative <sup>8</sup> default judgment affecting substantial rights. The  
8 courts abuse of discretion created the pro se lien ["CP" 480], denied the  
9 validity preserving fraud ["CP" 486, 487], this is an affirmative default  
10 obligation that should have been rendered August 7, 2001; Miller v. Lint,  
11 supra without costs incurred.

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16 **21) The Court of Appeals erred** November 10, 2009 denying Rose  
17 Howell Motion(s). The Court of Appeals affected substantial rights, the  
18 Plotner<sup>6 7</sup> filed late answers, have [never legally appeared, pled or  
19 defended], absent excusable neglect required by CR 6, powerless to  
20 respond and defend, the courts discretion is powerless to recognize the  
21 Plotner. This is a one sided litigation wasting time, money and life the trial  
22 court has previous determined there is no genuine issue as to any material  
23 facts the merits of the case entitle Rose Howell default judgment as a  
24 matter of law, pursuant to CR 50, CR 56; Calotex Corp. v. Catrett, 477  
25 U.S. 317, 324 (1986) the burden of proof met ["EX" 9]; Adickes v. Kress.,  
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1 398 U.S. 144, 157 (1970). The sole issue is the trial courts abuse of  
2 discretion; Turner v. Kohler, 54 Wn. App. 688, 693, 775 P.2d 474 (1989)  
3 manifested injustice.  
4

5 **22) The trial court erred** affecting the substantial rights of Rose  
6 Howell. The courts abuse of discretion affected substantial rights eleven  
7 years manifesting injustice, manifested criminal injustice, prevented  
8 justice served in a diligent manner, pursuant to CR 1 assured Rose Howell  
9 eleven years continuous heinous malicious deliberately inflicted secondary  
10 life altering injuries protecting an array of generated fraud, pursuant to CR  
11 60; Perry v. Hamilton, 51 Wn. App. 936, 938, 756 P.2d 150 (1988);  
12 Turner v. Kohler, 54 Wn. App. 688, 693, 775 P.2d 474 (1989). The  
13 Plotner are responsible an affirmative default judgment; Miller v. Lint,  
14 supra commencing August 7, 2001 ["CP" 2] affecting substantial rights  
15 eleven years.  
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20 **23) The Court of Appeals erred** affecting the substantial rights of  
21 Rose Howell. This is an eleven year default commenced August 7, 2001  
22 accepted August 10, 2001, the court found there is no genuine issues as to  
23 any material facts, the merits of the case entitle Rose Howell default  
24 judgment as a matter of law, pursuant to CR 50, CR 56; Calotex Corp. v.  
25 Catrett, 477 U.S. 317, 324 (1986), the burden of proof met; Adickes v.  
26 Kress., 398 U.S. 144, 157 (1970). The Plotner have [never legally  
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1 appeared, pled or defended], powerless to demonstrate excusable neglect  
2 required by CR 6, the courts discretion powerless to recognize the Plotner.  
3  
4 The court affected substantial rights rendering a ruling denying Rose  
5 Howell motions, the Plotner have been responsible for an affirmative  
6 default judgment since August 7, 2001 manifesting criminal injustice to  
7 avoid payment; Chrysler Credit Corp. v. Joseph L. Macino, 710 F.2d 363  
8 (7<sup>th</sup> Cir. 1983).

10 **24) The court erred** issuing the Plotner post-judgment orders. The  
11 court failed to recognize the courts discretion is limited, powerless to  
12 acknowledge the Plotner and their post-judgment motions preserving  
13 fraud, pursuant to CR 60. The Plotner are absent the ability to demonstrate  
14 excusable neglect required by CR 6, the Plotner orders lack legal authority  
15 having [never legally appeared, pled or defended]; Miller v. Lint, supra.

19 **V. STATEMENT OF THE CASE:**

20 This affirmative default, pursuant to CR 55 began on March 3,  
21 1999, a rear-end accident caused by the reckless negligence of Keith  
22 Plotner. Keith Plotner reckless negligence created life altering injuries  
23 including not limited to a degenerative spinal cord injury ["EX" 9], ["EX"  
24 A-AW], ["EX" BB 1-47], warranting a just, speedy, inexpensive resolve  
25  
26 March 3, 1999, pursuant to CR 1 and the Federal Justice Act of 1990.  
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1 July 10, 2001, Summons and Complaint <sup>7</sup> ["CP"1] was served.

2 August 7, 2001, (first late answer) Late Answer <sup>7</sup> filed by Keith  
3 Plotner ["CP" 2] was, not upon motion and without demonstration of  
4 excusable neglect required by CR 6; Davis v. Immediate Med. Serv., Inc.  
5 (1997), 80 Ohio St.3d 10, 14-15, 684 N.E.2d 292 rendering the Plotner in  
6 default obligated to pay an affirmative default judgment; Miller v. Lint,  
7 supra. The Plotner late answers filed ["CP" 2] assured the Plotner have  
8 [never legally appeared, pled or defended], incapable demonstrating  
9 excusable neglect required by CR 6, powerless to respond and defend.  
10 The courts discretion is limited, powerless to recognize the Plotner.  
11

12 August 10, 2001, Notice of Appearance ["CP" 3] was filed  
13 accepting the terms; Durham v. Florida East Coast Ry. Co., 385 F.2d 366,  
14 368 (5<sup>th</sup> Cir. 1967) providing a <sup>7</sup> notice of default before default judgment  
15 is entered. The courts discretion is limited, once the filing deadlines  
16 passes; Farmers & Merchants State & Sav. Bank v. Raymond G. Barr  
17 Ent., Inc. (1982), 6 Ohio App.3d 43, 43-44, 452 N.E.2d 521; Mc Donald  
18 v. Berry (1992), 84 Ohio App.3d 6, 9-10, 616 N.E.2d 248.  
19

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20 <sup>7</sup> CR 4; In order to defend against this lawsuit, you must respond to the complaint by  
21 stating your defense in writing, and serving a copy upon the person signing the summons  
22 within 20 days after the service of this summons, or a default judgment may be entered  
23 against you without notice. A default judgment is one where plaintiff is entitled to what  
24 he asks for because you have not responded. If you serve a notice of appearance on the  
25 undersigned person, you are entitled to notice of default before a default judgment may  
26 be entered.  
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1 November 15, 2001, ex-parte ["CP" 7] the courts ex-parte affected  
2 substantial rights to an affirmative default and default judgment.

3 December 4, 2003, Late Answer (second) <sup>1</sup> ["CP" 14, 15] filed,  
4 ["CP" 14] failed to provide a defense not upon service of a complaint.  
5

6 June 22, 2004, Order Amending the Complaint ["CP" 18] and  
7 Order Striking the Trial Date ["CP" 19], ex-parte. The complaint in  
8 default August 7, 2001 [did not] require amended, pursuant to CR 54.  
9

10 July 14, 2004, Late Answer (third) ["CP" 20] failed to provide a  
11 legal defense; Miller v. Lint, supra. The Plotner have <sup>1</sup> [never legally  
12 appeared, plead or defended]. The courts discretion is limited.  
13

14 July 25, 2005, Motion to Amend Complaint and Notice of Hearing  
15 ["CP" 25, 26] substituting the Estate for Keith Plotner. Substituting the  
16 Estate a technicality, Keith Plotner assets have been responsible for the  
17 affirmative default since March 3, 1999.  
18

19 August 26, 2005, Order Substituting the Estate ["CP" 27], the  
20 Estate was ordered substituted, the court declared, "This matter doesn't  
21 sound controversial." This matter entered into default August 7, 2001<sup>1</sup> was  
22 accepted August 10, 2001, the court failed to enter default judgment.  
23

24 August 29, 2005, Summons and Complaint ["CP" 28, 29] was served upon  
25 the Estate <sup>1</sup> then the acting respondent; Miller v. Lint, supra.  
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1 June 19, 2007, Rose Howell filed Pro Se Notice ["CP" 36, 37, 38]  
2 seeking the affirmative default judgment obligation; Union Planters Nat'l  
3 Bank of Memphis v. Markowitz, 468 F. Supp. 529, 533 (W.D. Tenn.  
4 1979). The Plotner have [never legally appeared, plead or defended],  
5 refused to come forward to pay restitution; Chemical Bank v. Dippolito,  
6 897 F. Supp. 221, 224 (E.D. Pa. 1995).

9 February 12, 2008, Motion for Default <sup>6</sup> <sup>7</sup> ["CP" 78, 79, 80, 83,  
10 83A], Supporting Affidavit, Certificate of Service, Notice of Hearing  
11 scheduled March 7, 2008 was filed; Miller v. Lint, supra. Notice of  
12 Default was served, provided the notice of appearance <sup>7</sup> August 10, 2001.

14 February 15, 2008, Late Answer (fourth) ["CP" 91] was filed,  
15 three days after Motion for Default was filed, failed to provide a legal  
16 appearance, pleading, <sup>1</sup> defense or a motion to set-aside default; Farmers  
17 & Merchants State & Sav. Bank v. Raymond G. Barr Ent., Inc. (1982), 6  
18 Ohio App.3d 43, 43-44, 452 N.E.2d 521; Mc Donald v. Berry (1992), 84  
19 Ohio App.3d 6, 9-10, 616 N.E.2d 248. The Plotner are in default obligated  
20 to render an affirmative default judgment; Miller v. Lint, supra.

21 February 27, 2008, Demand for Judgment, Affidavit, Certificate of  
22 Service ["CP" 95, 96, 97] provided computations made certain and  
23 supporting documentation enabling an extensive prima facie default.

1 March 7, 2008, Default hearing ["CP" 104]. The trial court denied  
2 default, set-aside default without good cause, abused its discretion  
3  
4 accepted the Plotner late answers ["CP" 2, 3, 14, 20, 91], the late answer  
5 February 15, 2008 ["CP" 91], as if, a motion to set-aside default, ordered  
6 trial at request of Angela Stewart permitted the Plotner respond and  
7  
8 defend absent the ability to demonstrate excusable neglect required by CR  
9 6; Syllabus Point 2, McDaniel v. Romano, 155 W. Va. 875, 190 S.E.2d 8  
10 (1972); Syllabus Point 3, Davis v. Sheppe, supra. The court declared to  
11  
12 Rose Howell the Plotner [are not] obligated to agree to pay the affirmative  
13 default judgment, pursuant to CR 54, CR 55 presented prima facie.

14 April 11, 2008, Order Denying Motion for Default ["CP" 173].  
15  
16 The court rendered the Order Denying Default ["CP" 173] declared the  
17  
18 Plotner have appeared, pled and defended. The court declared ["CP" 173]  
19  
20 would be viewed by the Court of Appeals as a discretionary review. The  
21  
22 court accepted the Plotner late answer ["CP" 2, 14, 20, 91] not upon  
23  
24 Davis v. Immediate Med. Serv., Inc. (1997), 80 Ohio St.3d 10, 14-15, 684  
25  
26 N.E.2d 292. The courts discretion is limited.

27 April 17, 2008, Case Reassigned ["CP" 174]. This default was  
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32 reassigned to the trial judge November 15, 2001 ex-parte to conduct trial.

1           September 15, 2008, Order appointing GAL [“CP” 249, 259 and  
2 Response “CP” 283, 284] violated sixth and fourteenth amendment rights  
3 to self-representation, objected to,<sup>5</sup> December 5, 2008 quashed. The SEC  
4 imposed a transaction hold on Safeco Corporation’s first quarter trading as  
5 Liberty Mutual; September 18, 2008 through December 18, 2008.  
6

7           December 5, 2008, Memorandum RE: Default [“CP 286] failed<sup>1</sup>  
8 to depict fact and law, failed to acknowledge the material facts and merits  
9 of the case presented prima facie affected substantial rights. December 5,  
10 2008, [“CP” 285] the court declared Rose Howell pro se attorney of record  
11 vacating the GAL.  
12

13           February 17, 2009, Motion for Summary Judgment<sup>1 2 8</sup> [“CP” 304,  
14 305, 321, 322] was filed moving to execute default judgment as a matter  
15 of law rendered forthwith, pursuant to CR 50, CR 56. Supported by [“EX”  
16 BB 1-47], [“EX” A-AW], [“EX” 9], [“CP” 2, 3, 14, 20, 91, 78, 79, 80, 95,  
17 96, 97, 304, 305, 321, 322, 442, 443]; Calotex Corp. v. Catrett, 477 U.S.  
18 317, 324 (1986); Adickes v. Kress., 398 U.S. 144, 157 (1970).  
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23           March 13, 2009, Motion for Summary Judgment hearing [“CP”  
24 323], the court requested pre-scheduled perpetual testimony [“EX” 9],  
25

26 \_\_\_\_\_  
27 <sup>8</sup> CR 56; provides that summary judgment shall be rendered forthwith if the pleadings,  
28 depositions, answers to interrogatories, and admissions on file, together with affidavits, if  
29 any, show that there is no genuine issue as to any material fact and that the moving party  
30 is entitled to judgment as a matter of law. FED. R. Civ. P. 56 (c).  
31

1 acknowledged the prima facie case [“EX” BB 1-47], [“EX” A-AW]  
2 granted Rose Howell an unnecessary extension. The deposition [“EX” 9]  
3 was conducted May 6, 2009, court proceedings were not delayed trial  
4 proceeded as scheduled.  
5

6 April 10, 2009, Order Granting Summary Judgment [“CP” 343],  
7 the court rendered the Plotner summary judgment failing legal authority;  
8 Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 256 (1986) admitted Rose  
9 Howell is entitled default judgment as a matter of law, pursuant to CR 50,  
10 CR 56 stipulated [“EX” 9]. April 13, 2009, Notice of Deposition to  
11 Perpetuate the Expert Testimony May 6, 2009 [“CP” 344, 345,346, 347],  
12 Notice of Hearing scheduled May 1, 2009 [“EX” 9].  
13  
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16 May 1, 2009, Order Granting Motion to Quash [“CP” 372], the  
17 court rendered the Plotner order quashed Rose Howell pre-scheduled  
18 testimony [“CP” 372]; Anderson, 477 U.S. at 255; USX Corp v. Liberty  
19 Mut. Ins. Co., Nos. 04-1277 & 04-1300, 2006 U.S. App. LEXIS 8702, at  
20 \*12-13 (3d Cir. Apr. 10, 2006). The deposition pre-scheduled was  
21 performed May 6, 2009 providing [“CP” 9]. The court declared there are  
22 other injuries failing to present any other material issues in summary  
23 judgment [“CP” 343] rendering Rose Howell the pro se treatment,  
24 produced the pro se lien [“CP” 480]. [“EX” 9] met summary judgment  
25 requirements [“CP” 406].  
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1 May 26 and 27, 2009, Trial ["CP" 398], the court conducted trial.  
2 Rose Howell presented ["EX" 9] May 26, 2009. Rose Howell objected  
3 during trial to the courts violation of the Supremacy Clause permitting the  
4  
5 <sup>1</sup> Plotner respond and defend; Miller v. Lint, supra.

6 June 8, 2009, Memorandum of Decision ["CP" 406], the courts  
7 written ruling failed to depict <sup>1 6 7</sup> fact and law; Turner v. Kohler, supra.  
8 Acknowledged Rose Howell is injured, the burden of proof met ["EX" 9];  
9 Adickes v. Kress., 398 U.S. 144, 157 (1970). June 15, 2008, Motion to  
10 Amend Findings ["CP" 407, 408, 409] was filed by Rose Howell moving  
11 the court to reflect fact and law; Turner v. Kohler, supra. The court's  
12 ruling failed to acknowledged the material facts and merits of the case.  
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16 July 17, 2009, Motion Hearing Judgment, the court entered the  
17 Plotner findings of fact and conclusions of law ["CP" 421] and judgment  
18 ["CP" 422] failed <sup>1</sup> fact and law. The Plotner have [never legally appeared,  
19 pled or defended].  
20

21 July 27, 2009, Motion for Judgment as a Matter of Law, pursuant  
22 to CR 50 was filed post-judgment ["CP" 429, 430, 431, 439, 440, 441,  
23 442]; Calotex Corp. v. Catrett, 477 U.S. 317, 324 (1986), the burden of  
24 proof had been met ["EX" 9], ["CP" 406].  
25  
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27 August 7, 2009, Order on Post-Judgment Motions ["CP" 446], the  
28 court denied Rose Howell post-judgment motion pending appellate  
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1 mandate. The court entered the Plotner post-judgment order ["CP" 446];  
2 Perry v. Hamilton, 51 Wn. App. 936, 938, 756 P.2d 150 (1988); Turner v.  
3 Kohler, 54 Wn. App. 688, 693, 775 P.2d 474 (1989). The court rendered  
4 thirty days to post liens.  
5

6 August 10, 2009, Notice of Appeal ["CP" 447], this matter is an  
7 appeal as a matter of right and law; Motion for Judgment as a Matter of  
8 Law pending appellate mandate.  
9

10 September 17, 2009, ["CP" 463A, 463B] Rose Howell filed the  
11 Claim to Lien, pro se pursuant to the courts orders August 7, 2009.  
12 September 18, 2009 ["CP" 464] Lien hearing, the court took its  
13 determination under advisement. October 13, 2009 Pro Se Lien amended  
14 interest accruing ["CP" 480]. October 20, 2009, Order Denying Pro Se  
15 Lien ["CP" 486, 487], the court denied validity of the pro se lien. October  
16 20, 2009, Order Disbursing Funds ["CP" 487].  
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20 October 29, 2009, Appellate Motions filed Court of Appeals.  
21 November 10, 2009 the Court of Appeals issued a ruling denying a  
22 accelerated Motion for Judgment as a Matter of Law, pursuant to CR 50,  
23 CR 56; Calotex Corp. v. Catrett, 477 U.S. 317, 324 (1986) affected <sup>1 2 6 8</sup>  
24 substantial rights; Slaughter, 162 N.C. App. At 462-63, 591 S.E.2d at 581-  
25 82 (2004); Earth Movers, Inc. v. Thomas, 182 N.C. App. 329, 641 S.E.2d  
26 751 (2007).  
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1 November 20, 2009, Appellate Motion to Modify the Ruling, the  
2 court found Rose Howell is entitled to an affirmative default and Rose  
3 Howell default judgment, there is no genuine issue as to any material facts  
4 the merits of the case entitle default judgment as a matter of law, pursuant  
5 to CR 50, CR 56; In re CWM Chemical Serv., Docket No. TSCA-PCB-  
6 91-0213, 1995 TSCA LEXIS 13, TSCA Appeal 93-1 (EAB, Order on  
7 Interlocutory Appeal, May 15, 1995); Harmon Electronics, Inc., RCRA  
8 No. VII-91-H-0037, 1993 RCRA LEXIS 247 (August 17, 1993).

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12 **VI. ARGUMENT:**

13 **A. The court should accelerate this review rendering default and**  
14 **Rose Howell default judgment, pursuant to CR 50, CR 56:**

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16 The law states just, speedy and inexpensive, pursuant to CR 1 and  
17 the Federal Justice Act of 1990, this affirmative litigation began March 3,  
18 1999, entered into default upon a late answer ["CP" 2] August 7, 2001;  
19 Miller v. Lint, supra. Eleven years isn't just, speedy or inexpensive,  
20 especially when deliberately inflicted eleven years of heinous malicious  
21 criminal injustice intended to bring into being death. Eleven years of  
22 organized crime deliberately inflicted because Rose Howell was waiting  
23 stopped at a red light isn't just, speedy or inexpensive. It's heinous.

24  
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26  
27 The Plotner have attempted every manifest of injustice known to  
28 man from willfully violating court applicable rules, deadline, disregarding  
29

1 the courts authority to deliberately filing eleven years continuous late  
2 answers ["CP" 2, 14, 20, 91]; Chrysler Credit Corp. v. Joseph L. Macino,  
3 710 F.2d 363 (7<sup>th</sup> Cir. 1983), erroneous pleadings, motions, orders  
4 intended to waste time; Idahosa v. King County, 133 Wn. App. 390 (2002)  
5 and avoid an affirmative default judgment accepted August 10, 2001;  
6 Chemical Bank v. Dippolito, 897 F. Supp. 221, 224 (E.D. Pa. 1995). The  
7 Plotner attempts to respond and defend lack legal authority absent the  
8 ability to demonstrate excusable neglect required by CR 6, a production of  
9 fraud, pursuant to CR 60; Anderson v. Liberty Lobby, Inc., 477 U.S. 242,  
10 256 (1986). The Plotner have [never legally appeared, pled or defended].  
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15 The trial court manifested abuse of discretion eleven years; Perry  
16 v. Hamilton, 51 Wn. App. 936, 938, 756 P.2d 150 (1988); Turner v.  
17 Kohler, 54 Wn. App. 688, 693, 775 P.2d 474 (1989). The Plotner have  
18 been enjoying the courts abuse of discretion dragging this default through  
19 the court till dooms day. The Plotner accepted terms August 10, 2001  
20 never intended to pay restitution to Rose Howell. The Plotner had previous  
21 enlisted relief of the liability deliberately intended Rose Howell die from  
22 Clonidine induced Chronic Kidney Failure.  
23  
24

25 The court found there is no genuine issue as to any material facts  
26 the merits of the case entitle Rose Howell default judgment as a matter of  
27 law, acknowledged the burden of proof has been met ["EX" 9], ["EX" BB  
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1 1-47], [“EX” A-AW]; Calotex Corp. v. Catrett, 477 U.S. 317, 324 (1986);  
2 Adickes v. Kress., 398 U.S. 144, 157 (1970). The trial court attempted to  
3 create an issue, un-successfully; Anderson, 477 U.S. at 255; USX Corp v.  
4 Liberty Mut. Ins. Co., Nos. 04-1277 & 04-1300, 2006 U.S. App. LEXIS  
5 8702, at \*12-13 (3d Cir. Apr. 10, 2006). The courts abuse of discretion  
6 contradicted itself declared Motion for Judgment as a Matter of Law,  
7 pursuant to CR 50, CR 56 pending appellate mandate.  
8

9  
10 The bottom line; the Plotner are absent the excusable neglect  
11 required by CR 6; Davis v. Immediate Med. Serv., Inc. (1997), 80 Ohio  
12 St.3d 10, 14-15, 684 N.E.2d 292. The courts discretion is limited,  
13 powerless to recognize the Plotner; Farmers & Merchants State & Sav.  
14 Bank v. Raymond G. Barr Ent., Inc. (1982), 6 Ohio App.3d 43, 43-44, 452  
15 N.E.2d 521; Mc Donald v. Berry (1992), 84 Ohio App.3d 6, 9-10, 616  
16 N.E.2d 248; Miller v. Lint, supra. The Plotner have lacked the mere  
17 allegation of a legal defense since filing a late answer August 7, 2001  
18 [“CP” 2]; Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 256 (1986). This  
19 default should have been ordered August 7, 2001 preventing the manifest  
20 of criminal injustice deliberately bestowed eleven years that created this  
21 liability. This is a one sided litigation providing nothing but wasted life,  
22 time and money simply because the Plotner don’t desire to be held  
23 accountable given the delusion murder will resolve an affirmative default.  
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1 Motion for Judgment as a Matter of Law, pursuant to CR 50, CR 56 is  
2 pending an appellate mandate.

3           The Plotner forfeited their legal authority August 7, 2001. The  
4 court should have executed default and default judgment August 7, 2001,  
5 organized crime can make their ill-gained wealth elsewhere. The sole  
6 order that will adjudge this protracted default is an accelerated order of  
7 default and Rose Howell default judgment rendered forthwith, pursuant to  
8 CR 50, CR 56; Calotex Corp. v. Catrett, 477 U.S. 317, 324 (1986); Miller  
9 v. Lint, supra; In re CWM Chemical Serv., Docket No. TSCA-PCB-91-  
10 0213, 1995 TSCA LEXIS 13, TSCA Appeal 93-1 (EAB, Order on  
11 Interlocutory Appeal, May 15, 1995); Harmon Electronics, Inc., RCRA  
12 No. VII-91-H-0037, 1993 RCRA LEXIS 247 (August 17, 1993).

13           The Court of Appeals rendering any ruling other than an  
14 accelerated order of default and Rose Howell default judgment, pursuant  
15 to CR 50, CR 56 would manifest injustice without good cause post-pone  
16 the inevitable; Syllabus Point 2, McDaniel v. Romano, 155 W. Va. 875,  
17 190 S.E.2d 8 (1972); Syllabus Point 3, Davis v. Sheppe, supra. The  
18 Plotner filing a response brief would manifest further injustice. The  
19 Plotner have manifested enough injustice. It's time for the court to prevent  
20 manifest of injustice and paralyze the Plotner ignorance, the court must  
21 acknowledge the law is superseded to organized crime penalizing the  
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1 Plotner to the furthest extent of the law; National Hockey League v.  
2 Metropolitan Hockey Club, Inc., 427 U.S. 639, 96 S. Ct. 2778, 49 L.Ed.2d  
3 747 (1976); Philips Medical Systems International, B.V. v. Bruetman, 8  
4 F.3d 600 (7<sup>th</sup> Cir. 1993).

6 Just, speedy and inexpensive [does not] reside in the Plotner  
7 dictionary. Times up! This default should have been ordered August 7,  
8 2001. The Plotner have an affirmative obligation they have been dodging  
9 long enough; Chemical Bank v. Dippolito, 897 F. Supp. 221, 224 (E.D.  
10 Pa. 1995) it's time for the court to prevent manifest of injustice preserving  
11 what little justice might be found rendering judgment as a matter of law,  
12 pursuant to CR 50, CR 56; Calotex Corp. v. Catrett, 477 U.S. 317, 324  
13 (1986); Miller v. Lint, supra; Chrysler Credit Corp. v. Joseph L. Macino,  
14 710 F.2d 363 (7<sup>th</sup> Cir. 1983).

15  
16 **B. The court should grant summary judgment, pursuant to CR 50,**  
17 **CR 56 rendering default judgment as a matter of law:**

18  
19 The court has previous determined Rose Howell is entitled default  
20 judgment as a matter of law, pursuant CR 50, CR 56; Calotex Corp. v.  
21 Catrett, 477 U.S. 317, 324 (1986). The court acknowledged the burden of  
22 proof has been met; Adickes v. Kress., 398 U.S. 144, 157 (1970), there is  
23 no genuine issues as to any material facts the merits of the case entitle  
24 Rose Howell default judgment as a matter of law, pursuant to CR 50, CR  
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1 56; Miller v. Lint, supra. The courts personal abuse of discretion found  
2 itself incapable rendering default judgment forthwith, pursuant to CR 50,  
3 CR 56; Perry v. Hamilton, 51 Wn. App. 936, 938, 756 P.2d 150 (1988);  
4 Turner v. Kohler, 54 Wn. App. 688, 693, 775 P.2d 474 (1989) after  
5 intentionally manifested injustice; Anderson, 477 U.S. at 255; USX Corp  
6 v. Liberty Mut. Ins. Co., Nos. 04-1277 & 04-1300, 2006 U.S. App. LEXIS  
7 8702, at \*12-13 (3d Cir. Apr. 10, 2006).  
8

9  
10 As a matter of law, this one sided litigation is intentionally wasting  
11 time, money and life; Idahosa v. King County, 133 Wn. App. 390 (2002)  
12 to avoid an affirmative default judgment; Chemical Bank v. Dippolito, 897  
13 F. Supp. 221, 224 (E.D. Pa. 1995); Union Planters Nat'l Bank of Memphis  
14 v. Markowitz, 468 F. Supp. 529, 533 (W.D. Tenn. 1979). The Plotner are  
15 powerless to respond and defend this default; Davis v. Immediate Med.  
16 Serv., Inc. (1997), 80 Ohio St.3d 10, 14-15, 684 N.E.2d 292. The court is  
17 powerless to recognize the Plotner; Farmers & Merchants State & Sav.  
18 Bank v. Raymond G. Barr Ent., Inc. (1982), 6 Ohio App.3d 43, 43-44, 452  
19 N.E.2d 521; Mc Donald v. Berry (1992), 84 Ohio App.3d 6, 9-10, 616  
20 N.E.2d 248; Miller v. Lint, supra. The necessary element of excusable  
21 neglect required by CR 6 assures the sole order that will adjudge this  
22 matter is default and default judgment. The Plotner filed continuous late  
23 answers avoiding restitution disregarding court applicable rules, therefore,  
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1 the Plotner assured an order of default and default judgment; Chrysler  
2 Credit Corp. v. Joseph L. Macino, 710 F.2d 363 (7<sup>th</sup> Cir. 1983); Miller v.  
3 Lint, supra.

4  
5 Rose Howell filed summary judgment <sup>2 8</sup> moving the court for  
6 default judgment as a matter of law rendered forthwith, pursuant to CR 50,  
7 CR 56 requesting the courts personal prejudice to acknowledge the Plotner  
8 are in default obligated to pay an affirmative default judgment, having  
9 [never legally appeared, pled or defended]; Miller v. Lint, supra; Calotex  
10 Corp. v. Catrett, 477 U.S. 317, 324 (1986); Chrysler Credit Corp. v.  
11 Joseph L. Macino, 710 F.2d 363 (7<sup>th</sup> Cir. 1983). The court should have  
12 executed default and default judgment. It's time the courts stop  
13 manifesting injustice. The courts are responsible to prevent the manifest of  
14 injustice not create it.  
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19 Rose Howell has jumped through every legal hoop the courts  
20 manifest abuse of discretion has conjured up; Anderson, 477 U.S. at 255;  
21 USX Corp v. Liberty Mut. Ins. Co., Nos. 04-1277 & 04-1300, 2006 U.S.  
22 App. LEXIS 8702, at \*12-13 (3d Cir. Apr. 10, 2006). Times up! It's time  
23 to execute default and default judgment as a matter of law forthwith,  
24 pursuant to CR 50, CR 56; Calotex Corp. v. Catrett, 477 U.S. 317, 324  
25 (1986); Chrysler Credit Corp. v. Joseph L. Macino, 710 F.2d 363 (7<sup>th</sup> Cir.  
26 1983); Miller v. Lint, supra.  
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1           The courts abuse of discretion has given the Plotner the idea they  
2 can recklessly violate. Then heinously maliciously deliberately violate to  
3 relieve liability. The Court of Appeals needs to paralyze the violence;  
4  
5 Davis v. Hutchins, 321 F.3d 641 (7<sup>th</sup> Cir, 2003); United States v.  
6 DeFrantz, 708 F.2d 310 (7<sup>th</sup> Cir. 1983) rendering an accelerated order of  
7 default and Rose Howell default judgment preventing further manifest of  
8 injustice, pursuant to CR 50, CR 56; Miller v. Lint, supra; Chrysler Credit  
9 Corp. v. Joseph L. Macino, 710 F.2d 363 (7<sup>th</sup> Cir. 1983); Calotex Corp. v.  
10 Catrett, 477 U.S. 317, 324 (1986). Motion for Judgment as a Matter of  
11 Law, pursuant to CR 50 is pending appellate mandate, pursuant to CR 50,  
12 CR 56. This default has been previous determined the courts prejudice is  
13 powerless to render default judgment as a matter of law; Calotex Corp. v.  
14 Catrett, 477 U.S. 317, 324 (1986). The court should have reused itself;  
15 United States v. Grinnell Corp., 384 U.S. 563, 583, 86 S. Ct. 1698, 1710,  
16 16 L.Ed.2d 778 (1966).

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19 **C. The appellate court should modify its ruling November 10, 2009**  
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21 **entering default and default judgment pursuant to CR 50, CR 56:**

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24           Enough is enough! The courts should have ordered this long ago  
25 preventing the manifest of criminal injustice that has taken place eleven  
26 years; Miller v. Lint, supra. The Plotner forfeited the legal right to respond  
27 and defend August 7, 2001 <sup>7</sup> filing a late answer [“CP” 2], accepted the  
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1 terms ["CP" 3], failed to act responsible obligated to pay an affirmative  
2 default created out of reckless negligence March 3, 1999; Union Planters  
3 Nat'l Bank of Memphis v. Markowitz, 468 F. Supp. 529, 533 (W.D. Tenn.  
4 1979). The only thing the Plotner have done eleven years is create  
5 liability. They certainly haven't accepted responsible. The court has  
6 manifested injustice assisted the Plotner ignorance and greed.  
7  
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9       The courts abuse of discretion acknowledged Rose Howell is  
10 entitled default judgment as a matter of law, pursuant to CR 50, CR 56;  
11 Calotex Corp. v. Catrett, 477 U.S. 317, 324 (1986); Miller v. Lint, supra.  
12 Finding there is no genuine issue as to any material facts, the merits of the  
13 case entitle Rose Howell default judgment as a matter of law,  
14 acknowledged the burden of proof had been met; Adickes v. Kress, 398  
15 U.S. 144, 157 (1970), the court acknowledged the extensive evidence  
16 supporting the default demand. Then abused the courts discretion denying  
17 Motion for Judgment as a Matter of Law, pursuant to CR 50 secondary to  
18 <sup>2</sup> Motion for Summary Judgment, pursuant to CR 56 and Motion for  
19 Default, pursuant to CR 1, CR 4, CR 6, CR 54, CR 55; Perry v. Hamilton,  
20 51 Wn. App. 936, 938, 756 P.2d 150 (1988); Turner v. Kohler, 54 Wn.  
21 App. 688, 693, 775 P.2d 474 (1989) contradicting itself and the law  
22 providing Rose Howell the pro se treatment manifesting injustice  
23 prejudicially preserving fraud affecting substantial rights; Earth Movers,  
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1 Inc. v. Thomas, 182 N.C. App. 329, 641 S.E.2d 751 (2007); Slaughter,  
2 162 N.C. App. At 462-63, 591 S.E.2d at 581-82 (2004).

3           The Plotner filed late answers have <sup>6 7</sup> [never legally appeared,  
4 pled or defended], absent excusable neglect required by CR 6 to file a  
5 response brief; Davis v. Immediate Med. Serv., Inc. (1997), 80 Ohio St.3d  
6 10, 14-15, 684 N.E.2d 292. The courts discretion is powerless to recognize  
7 the Plotner; Farmers & Merchants State & Sav. Bank v. Raymond G. Barr  
8 Ent., Inc. (1982), 6 Ohio App.3d 43, 43-44, 452 N.E.2d 521; Mc Donald  
9 v. Berry (1992), 84 Ohio App.3d 6, 9-10, 616 N.E.2d 248; Miller v. Lint,  
10 supra. This default has affected substantial rights eleven years to preserve  
11 fraud; Slaughter, 162 N.C. App. At 462-63, 591 S.E.2d at 581-82 (2004);  
12 Earth Movers, Inc. v. Thomas, 182 N.C. App. 329, 641 S.E.2d 751 (2007).

13           This is a one sided litigation; Anderson v. Liberty Lobby, Inc., 477  
14 U.S. 242, 256 (1986) doing nothing but wasting time, money and life of  
15 Rose Howell serving organized crime the Plotner premeditatedly enlisted.  
16 The Court of Appeals should prevent further manifest of injustice  
17 penalizing the recalcitrant Plotner to the furthest extent of the law, modify  
18 the ruling November 10, 2009 rendering an accelerated mandate executing  
19 default and Rose Howell default judgment as a matter of law, pursuant to  
20 CR 50, CR 56; Calotex Corp. v. Catrett, 477 U.S. 317, 324 (1986);  
21 National Hockey League v. Metropolitan Hockey Club, Inc., 427 U.S.

1 639, 96 S. Ct. 2778, 49 L.Ed.2d 747 (1976); Philips Medical Systems  
2 International, B.V. v. Bruetman, 8 F.3d 600 (7<sup>th</sup> Cir. 1993). Default and  
3 default judgment should have been executed August 7, 2001 before the  
4 secondary life altering injuries created this liability; Miller v. Lint, supra.  
5 The Court of Appeals should teach crime a valuable lesson; Calotex Corp.  
6 v. Catrett, 477 U.S. 317, 324 (1986). The Plotner obviously have no  
7 conscience failed eleven years to pay an affirmative default judgment after  
8 accepting August 10, 2001; Durham v. Florida East Coast Ry. Co., 385  
9 F.2d 366, 368 (5<sup>th</sup> Cir. 1967); Chrysler Credit Corp. v. Joseph L. Macino,  
10 710 F.2d 363 (7<sup>th</sup> Cir. 1983).

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14 **D. The court should grant the Pro Se Lien:**

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16 December 5, 2008, the court declared Rose Howell the pro se  
17 attorney of record, acknowledged sixth and fourteenth amendment <sup>9</sup> <sup>10</sup>  
18 rights to self-representation. The United States Constitution is superseded  
19 to state law defines attorney as self-represented, RCW 60.40.010 does not  
20 define the term attorney as bar licensed versus constitutionally protected;  
21 self-representation. The courts personal abuse of discretion interprets the  
22 law, RCW 60.40.010 a party must poses a bar license to file a pro se  
23 attorney lien. Self-representation has been protected since the first  
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28 <sup>9</sup> R. v. Woodward, [1944] K.B. 118, 119, [1944] All E.R. 159 160, has evidently always  
29 been that "no person can have counsel forced upon him against his will."  
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1 congress and President Washington.<sup>10</sup> Self representation has been  
2 protected by statute since the beginnings of our nation, therefore, attorney  
3 means a party conducting litigation in a legal dispute.  
4

5 RCW 60.40.010 defines Rose Howell pro se lien as superior to all  
6 other liens, the sole attorney lien [self-represented] that brought forth the  
7 only valuable service to the resolution of this eleven year default. The pro  
8 se lien is solely for costs incurred. The court should have awarded the pro  
9 se lien, superior to all other liens since the court and the Plotner created  
10 the pro se lien providing Rose Howell elaborate pro se treatment  
11 manifesting an array of injustice contradicting the court's rulings to and  
12 fro avoiding default judgment; Calotex Corp. v. Catrett, 477 U.S. 317, 324  
13 (1986).  
14  
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16

17 The Plotner have been in default since August 7, 2001, there  
18 shouldn't have been any costs, let alone the excessive costs Rose Howell  
19 has incurred attempting to acquire an affirmative default and default  
20 judgment the Plotner responsibly should have paid August 7, 2001; Miller  
21  
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24 <sup>10</sup> United States. Faretta v. California, [36] the United States Supreme Court relates that  
25 "[i]n the federal courts the right to self representation has been protected by statute since  
26 the beginnings of our nation. Section 35 of the Judiciary Act of 1789, 1 Stat. 73, 92,  
27 enacted by the First Congress and signed President Washington one day before the Sixth  
28 Amendment was proposed, provided that "in all courts of the United States, the party(s)  
29 may plead and manage their own cases personally or by the assistance of  
30 counsel "[37]. The Right of Self-Representation was one of the first laws passed after the  
31 War of Independence because it was of concern of people [38].  
32

1 v. Lint, supra. The court was advised in open court the excessive  
2 expenditures associated with this default. The court continued to manifest  
3 injustice and abuse its discretion creating expenditures, accruing interest  
4 rapidly. The Plotner chose of free will to avoid restitution, creating the pro  
5 se lien solely for costs incurred to Rose Howell. The Plotner responsibly  
6 should have requested a demand August 7, 2001 ["CP" 2]. The default and  
7 default judgment were accepted August 10, 2001 ["CP" 3]; Durham v.  
8 Florida East Coast Ry. Co., 385 F.2d 366, 368 (5<sup>th</sup> Cir. 1967). The Court  
9 of Appeals should render the Pro Se Lien with accrued interest paid, the  
10 Plotner created the pro se lien with their reckless irresponsibility.

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15 **E. The court should vacate strike the Plotner summary judgment:**

16 The court should vacate and strike the Plotner summary judgment  
17 from court record ["CP" 343] the order is a production of fraud, pursuant  
18 to CR 60; Turner v. Kohler, supra. The Plotner have [never legally  
19 appeared, pled or defended], the order lacks legal authority; Anderson v.  
20 Liberty Lobby, Inc., 477 U.S. 242, 256 (1986); Chrysler Credit Corp. v.  
21 Joseph L. Macino, 710 F.2d 363 (7<sup>th</sup> Cir. 1983). The sole validity  
22 produced by the Plotner summary judgment, the court acknowledged Rose  
23 Howell is entitled default judgment as a matter of law, pursuant to CR 50,  
24 CR 56 meeting the courts stipulation ["EX" 9]; Adickes v. Kress., 398  
25 U.S. 144, 157 (1970). The Plotner summary judgment was intended to  
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1 create a issue; Anderson, 477 U.S. at 255; USX Corp v. Liberty Mut. Ins.  
2 Co., Nos. 04-1277 & 04-1300, 2006 U.S. App. LEXIS 8702, at \*12-13 (3d  
3  
4 Cir. Apr. 10, 2006).

5 The courts abuse of discretion created further expenditures insured  
6 further costs associated with the pro se lien. The court abused its  
7  
8 discretion entering the Plotner order, therefore, vacating striking the order  
9 from record would prevent further manifest of injustice; Perry v.  
10 Hamilton, 51 Wn. App. 936, 938, 756 P.2d 150 (1988); Turner v. Kohler,  
11  
12 54 Wn. App. 688, 693, 775 P.2d 474 (1989).

13 **F. The court should vacate strike the Plotner order quashing Rose**

14 **Howell perpetual testimony:**

15  
16 The court should vacate strike the Plotner order from court record  
17 since it is a production of fraud, pursuant to CR 60 intended to create an  
18  
19 issue; Anderson, 477 U.S. at 255; USX Corp v. Liberty Mut. Ins. Co.,  
20 Nos. 04-1277 & 04-1300, 2006 U.S. App. LEXIS 8702, at \*12-13 (3d Cir.  
21  
22 Apr. 10, 2006). The Plotner have [never legally appeared, pled or  
23 defended], the Plotner order quashing Rose Howell testimony lacks legal  
24  
25 authority since Rose Howell is the sole party capable of responding and  
26  
27 defending this default; Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 256  
28  
29 (1986). The courts abuse of discretion rendered the order intended to  
30  
31 persuade Rose Howell not to obtain expert testimony after notification of  
32

1 the perpetual testimony was served, therefore, dictating the testimony  
2 provided during trial, controlling the outcome. The testimony was  
3 originally requested presuming the impossible creating an issue for the  
4 Plotner. The court acknowledged the extensive evidence met the burden of  
5 proof; Adickes v. Kress, 398 U.S. 144, 157 (1970).

6  
7  
8 The court abused its discretion rendering any order of the Plotner  
9 having no legal authority August 7, 2001; Miller v. Lint, supra. The court  
10 is intended to prevent manifest injustice not create it. The court rendered  
11 the Plotner order quashing Rose Howell testimony affected substantial  
12 rights; Slaughter, 162 N.C. App. At 462-63, 591 S.E.2d at 581-82 (2004).

13  
14 The deposition was pre-scheduled, conducted timely, [did not]  
15 delay court proceedings and was Rose Howell legal right to have a private  
16 provide testimony. The court should vacate and strike the order from  
17 record since the order manifests injustice lacking legal authority; Chrysler  
18 Credit Corp. v. Joseph L. Macino, 710 F.2d 363 (7<sup>th</sup> Cir. 1983) does  
19 nothing but affects substantial rights; Earth Movers, Inc. v. Thomas, 182  
20 N.C. App. 329, 641 S.E.2d 751 (2007).

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24 **G. The court should vacate strike the Plotner post-judgment order.**

25  
26 **Granting Rose Howell post-judgment motions:**

27 The Plotner post-judgment order is a production of fraud, pursuant  
28 to CR 60, lacking legal authority, the Plotner are absent the ability to  
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1 demonstrate excusable neglect required by CR 6. The courts discretion  
2 does not permit the court recognize the Plotner and their orders; Farmers  
3 & Merchants State & Sav. Bank v. Raymond G. Barr Ent., Inc. (1982), 6  
4 Ohio App.3d 43, 43-44, 452 N.E.2d 521; Mc Donald v. Berry (1992), 84  
5 Ohio App.3d 6, 9-10, 616 N.E.2d 248; Miller v. Lint, supra, therefore, the  
6 court rendered the Plotner order manifested injustice must be stricken  
7 vacated from court record preventing manifest of injustice. The Plotner  
8 have [never legally appeared, pled or defended], the Plotner post-judgment  
9 order affected substantial rights; Earth Movers, Inc. v. Thomas, 182 N.C.  
10 App. 329, 641 S.E.2d 751 (2007). Deposited insufficient funds in the  
11 clerks account, declared this default settled. The Plotner are in default  
12 obligated to pay an affirmative default judgment. Until the default  
13 judgment is paid this matter is not settled; Calotex Corp. v. Catrett, 477  
14 U.S. 317, 324 (1986); Chrysler Credit Corp. v. Joseph L. Macino, 710  
15 F.2d 363 (7<sup>th</sup> Cir. 1983). .

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22 The court should vacate strike the Plotner orders rendering into  
23 court record Rose Howell post-judgment motions preventing the manifest  
24 of further injustice. The Plotner are in default; Miller v. Lint, supra. The  
25 court ordering Motion for Judgment as a Matter of Law, pursuant to CR  
26 50 is appropriate since the trial court determined Rose Howell is entitled  
27 default judgment as a matter of law, pursuant to CR 50, CR 56; Calotex  
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1 Corp. v. Catrett, 477 U.S. 317, 324 (1986) the burden of proof met;  
2 Adickes v. Kress., 398 U.S. 144, 157 (1970). The Court of Appeals should  
3 prevent further manifest of injustice rendering an accelerated order of  
4 default and Rose Howell default judgment forthwith, pursuant to CR 50,  
5 CR 56; Calotex Corp. v. Catrett, 477 U.S. 317, 324 (1986). This default  
6 should have been ordered August 7, 2001; Miller v. Lint, supra.  
7  
8

9 **H. The court should render written ruling reflecting fact and law,**  
10 **striking vacating all previous findings from court record:**  
11

12 The courts written ruling June 8, 2009 solely determined Rose  
13 Howell injured, meeting the burden of proof; Adickes v. Kress., 398 U.S.  
14 144, 157 (1970). The court failed fact and law when rendering its decision  
15 June 8, 2009; Turner v. Kohler, supra. The court acknowledged the prima  
16 facie evidentiary support, the expert testimony, the court failed to reflect  
17 fact and law. The court refuses to admit the Plotner are in default  
18 responsible for an affirmative default judgment, absent the excusable  
19 neglect required by CR 6; Miller v. Lint, supra.  
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22  
23 The court rendered the Plotner findings of fact and conclusions of  
24 law into court record lacking legal authority, absent excusable neglect  
25 required by CR 6 to respond and defend; Davis v. Immediate Med. Serv.,  
26 Inc. (1997), 80 Ohio St.3d 10, 14-15, 684 N.E.2d 292, therefore, the courts  
27 memorandum June 8, 2009 and the Plotner findings of fact and  
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1 conclusions of law July 17, 2009 fail fact and law manifest injustice  
2 affecting substantial rights; Earth Movers, Inc. v. Thomas, 182 N.C. App.  
3 329, 641 S.E.2d 751 (2007).  
4

5 The court should vacate the rulings and findings, rendering a ruling  
6 declaring factual and legal basis. The Plotner have [never legally  
7 appeared, pled or defended]. The record should reflect fact, law and the  
8 merits of the case preventing manifest of injustice.  
9

10 **I. The court should vacate strike the Plotner orders issued:**  
11

12 The court rendered the Plotner orders [“CP” 173, 249, 259, 286,  
13 343, 372, 406, 421, 422, 446, 486, 487] manifesting injustice affecting  
14 substantial rights Slaughter, 162 N.C. App. At 462-63, 591 S.E.2d at 581-  
15 82 (2004). The Plotner are absent the excusable neglect required by CR 6.  
16 The court is powerless to recognize the Plotner; Miller v. Lint, supra, the  
17 orders lack legal authority and must be stricken from court record  
18 preventing further manifest of injustice. The Plotner have [never legally  
19 appeared, pled or defended]. The court abused its discretion; Perry v.  
20 Hamilton, 51 Wn. App. 936, 938, 756 P.2d 150 (1988).  
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23 **J. The court should vacate reverse judgment entered July 17, 2009:**  
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25 The Plotner have [never legally appeared, pled or defended],  
26 absent the excusable neglect required by CR 6; Davis v. Immediate Med.  
27 Serv., Inc. (1997), 80 Ohio St.3d 10, 14-15, 684 N.E.2d 292, therefore, the  
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1 courts discretion does not permit the court to recognize the Plotner, their  
2 judgment, orders, verbal requests affecting substantial rights; Earth  
3 Movers, Inc. v. Thomas, 182 N.C. App. 329, 641 S.E.2d 751 (2007);  
4 Slaughter, 162 N.C. App. At 462-63, 591 S.E.2d at 581-82 (2004), the  
5 Plotner responded and defended contrary to law. The court abused its  
6 discretion affected substantial rights rendered the Plotner judgment failing  
7 fact and law manifested injustice, pursuant to CR 60; Turner v. Kohler,  
8 supra. Any order other than default judgment fails fact and law manifests  
9 injustice a production of the courts abuse of discretion; Turner v. Kohler,  
10 54 Wn. App. 688, 693, 775 P.2d 474 (1989); Perry v. Hamilton, 51 Wn.  
11 App. 936, 938, 756 P.2d 150 (1988). Judgment must be vacated a  
12 production of fraud, pursuant to CR 60 and default and default judgment  
13 rendered forthwith, pursuant to CR 50, CR 56; Calotex Corp. v. Catrett,  
14 477 U.S. 317, 324 (1986); Miller v. Lint, supra.

20 The courts abuse of discretion refused to acknowledge just, speedy  
21 and inexpensive August 7, 2001 ["CP" 2] gave its consent to the Plotner  
22 enlisting organized crime to avoid restitution affecting substantial rights  
23 providing an array of fraud manifesting criminal injustice unlawfully  
24 pardoned by unlawful political policies; alternatives to litigation violating  
25 Article VI, Supremacy Clause. Just, speedy and inexpensive have legal  
26 basis, it provides safety, security, legal and constitutional rights to injured.  
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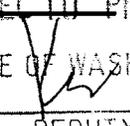
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**VII. CONCLUSION:**

The courts have abused their discretion affecting substantial rights; Slaughter, 162 N.C. App. At 462-63, 591 S.E.2d at 581-82 (2004); Miller v. Lint, supra. The Plotner lack excusable neglect required by CR 6. The courts discretion is powerless. The Plotner have [never legally appeared, pled or defended] have been in default since August 7, 2001 responsible to pay an affirmative default judgment. The courts abuse of discretion, the Plotner flagrant disregard, the Court of Appeals ruling November 10, 2009 affects substantial rights. Times up!

The Court of Appeals, preventing manifest of injustice must render justice executing an accelerated order of default and Rose Howell default judgment as a matter of law, pursuant to CR 1, CR 50, CR 56. Render Rose Howell post-judgment motions into court record. Order the Pro Se Lien paid by the Plotner in an immediate fashion. Strike vacate previous [the Plotner and the trial courts] findings, orders and judgment from court record, pursuant to CR 60 manifesting injustice. The Court of Appeals must modify its ruling November 10, 2009 rendering an accelerated order of default and Rose Howell default judgment as a matter of law forthwith, pursuant to CR 50, CR 56. The court must enter a ruling into court record to reflecting fact and law, the material facts and the merits established. The court must preserve justice prevent further manifest of injustice.

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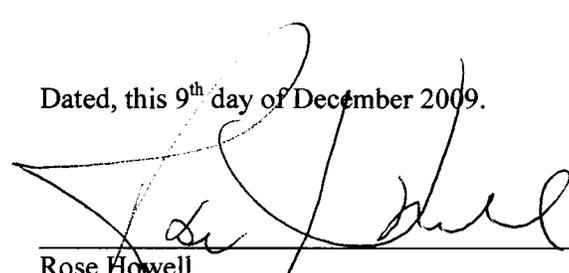
STATE OF WASHINGTON  
BY  \_\_\_\_\_  
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**CERTIFICATE OF SERVICE**

I certify that on the 9<sup>th</sup> day of December, 2009, I caused a true and correct copy of the **Appellant's Brief and Certificate of Service** to be served on the following in the manner indicated below:

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Dated, this 9<sup>th</sup> day of December 2009.



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**COPY**

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adequate, complete)  
E. Shuler*

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COURT OF APPEALS OF THE STATE OF WASHINGTON,  
DIVISION II

CASE No. 39670-0-II

SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN COUNTY OF CLARK

Case No.: 01-2-02693-7

ROSE HOWELL, Appellant,  
V.

ARLIS J. PLOTNER, as the personal representative of the  
ESTATE OF KEITH WALTER PLOTNER,  
DECEASED,  
Respondent

**APPELLANT'S BRIEF  
AND  
CERTIFICATE OF SERVICE**

Rose Howell, Pro Se

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DIVISION II  
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