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SUPREME COURT  
STATE OF WASHINGTON  
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CLERK

NO. 101047-8  
IN THE SUPREME COURT OF WASHINGTON

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John Earl Erickson and  
Shelley Ann Erickson, *in propria persona*,  
Plaintiffs/Appellants,

v.

VANESSA POWER AND STOEL AND  
RIVES AND SELECT PORTFOLIO  
SERVICING, JOHN GLOWNEY AND  
WILL EIDSON, THOMAS REARDON,  
AND LANCE OLSEN,  
Defendants/Respondents.

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PETITIONERS' ANSWER TO  
MOTION TO STRIKE REPLY TO RESPONDENTS'  
AUGUST 21, 2022 ANSWER TO PETITION FOR REVIEW

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On Appeal from King County Superior Court  
No. 20-2-08633-9 KNT  
Judge Ken Schubert Presiding

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## I. INTRODUCTION

Pursuant to the August 21, 2022 letter from the Clerk of the Washington Supreme Court, Petitioners John Earl Erickson (Mr. Erickson) and Shelley Ann Erickson (Ms. Erickson), collectively the Ericksons, submit their Answer to the Motion to Strike Petitioners' Reply to Respondents' Answer to their Amended Petition for Review filed by Respondents<sup>1</sup> and will submit their Reply on their Request for Judicial Notice separately. The filings at issue will be considered with the merits in accordance with the procedure acknowledged in *In re Adoption of BT*, 150 Wash.2d 409, 78 P.3d 634, 636 (Wash. 2003) ("These motions were passed to the merits.").

Petitioners' Reply and their Request for Judicial Notice was submitted for the purpose of exposing Respondents' long-

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<sup>1</sup> Respondents are SELECT PORTFOLIO SERVICING, INC. (SPS); the law firm retained by SPS, STOEL RIVES LLP (STOEL RIVES); and lawyers employed by STOEL RIVES: Vanessa Power, John Glowney, and Will Eidson.

standing pattern of litigation misconduct, designed to mislead the King County Superior Court, the Court of Appeals and now this Court. To strike the Reply to the Answer to the Petition for Review would result in continuing the deprivation of Petitioners' Due Process Rights by allowing another of Respondents' false filings to stand in the record without Petitioners having the opportunity to be heard in opposition to Respondents' misrepresentations of fact and law in their Answer to the Petition for Review.

The Rules of Appellate Procedure (RAP) are to be liberally interpreted to promote justice and facilitate the decision of cases on the merits. RAP 1.2(a) provides:

**INTERPRETATION AND WAIVER OF RULES BY COURT**

**(a) Interpretation.** These rules will be liberally interpreted to promote justice and facilitate the decision of cases on the merits. *Cases and issues will not be determined on the basis of compliance or noncompliance with these rules except in compelling circumstances*

*where justice demands*, subject to the restrictions in rule 18.8(b)<sup>2</sup>. (Emphasis added.)

Respondents have made no showing that justice demands that Petitioners' effort, by their Reply, to inform this Court of the misrepresentations of fact and law in Respondents' Answer to their Amended Petition for Review must be stricken for noncompliance with any of the Rules of Appellate Procedure.

Petitioners' Reply to Respondents' Answer to Amended Petition for Review does not seek to submit additional evidence into the record for review. By their Reply, Petitioners seek to

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<sup>2</sup> RAP 18.8(b) does not apply to the Reply to Respondents' Answer.

RAP 18.8(b) provides:

(b) Restriction on Extension of Time. The appellate court will only in extraordinary circumstances and to prevent a gross miscarriage of justice extend the time within which a party must file a notice of appeal, a notice for discretionary review, a motion for discretionary review of a decision of the Court of Appeals, a petition for review, or a motion for reconsideration. The appellate court will ordinarily hold that the desirability of finality of decisions outweighs the privilege of a litigant to obtain an extension of time under this section. The motion to extend time is determined by the appellate court to which the untimely notice, motion or petition is directed.

expose Respondents' litigation misconduct before this Court in Respondents' Answer so that this Court is not misled by Respondents' misrepresentations of fact and law in their Answer, a practice in which Respondents have successfully engaged in the STOEL RIVES/SPS Action and the Related Actions<sup>3</sup>. In the event that the Court declines to consider the

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3 The Related Actions, which form the basis of Petitioners' present action and Respondents' defense to the present action are the following:

1. *Erickson v. Long Beach Mortg. Co., et al.*, Western District of Washington (WAWD) Case No. 10-1423-MJP, were identified by the Federal District Court as "LONG BEACH MORTGAGE CO., WASHINGTON MUTUAL BANK, DEUTSCHE BANK NATIONAL TRUST COMPANY, and CHASE BANK" originating the King County Superior Court in August, 2010 (the Federal District Court Action);
2. *Deutsche Bank National Trust Company, as Trustee for Long Beach Mortgage Loan Trust 2006-4 v. Erickson, et al.*, in King County Superior Court as Case No. 14-2-00426-5 KNT filed on January 3, 2014. by Respondents Glowney and Eidson who were employed by STOEL RIVES and were retained by SPS (the Foreclosure Action);
3. *Erickson, et al. v. Deutsche Bank National Trust Company, as Trustee for Long Beach Mortgage Loan Trust 2006-4*, in King County Superior Court Case No. 19-2-12664-7 KNT, commenced on May 19, 2020 (the Independent Action); and
4. *Erickson, et al. v. Power, et al.*, in King County Superior Court

judicially noticeable documents in support of Petitioners' Reply which expose Respondents' misrepresentations to this Court, made without any evidentiary basis and by argument only, Petitioners have deleted references to the judicially noticeable documents (Requests for Judicial Notice Exhibits 1-8) and submit, as Appendix 1 attached hereto, a modified version of their Reply which consists of argument only.

Petitioners are well-aware, from years of litigation experience, both as represented parties and also while being self-represented in this and the Related Actions in the courts of the State of Washington, that the courts tended to treat argument, without evidence, from attorneys in foreclosure proceedings and related actions as facts while suppressing or disregarding the arguments and evidence presented by counsel

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Case No. 19-2-12664-7 KNT, commenced on May 7, 2020 in King County Superior Court No. 20-2-08633-9 against Defendants Vanessa Power ("POWER"), STOEL RIVES, Select Portfolio Services, Inc. ("SPS"), EIDSON and GLOWNEY (the STOEL RIVES/SPS Action).

for the Petitioners<sup>4</sup> or when they were proceeding pro se. This Court is urged to consider Petitioners' Reply supported by evidence including the judicially noticeable documents or, in the alternative, to accept their modified Reply as argument based on the portions of the Clerk's Papers without the judicially noticeable documents. Respondents rely on argument only and make no reference to the record except the Amended Petition for Review, the Reply and Requests for Judicial Notice and their Answer.

## **II. RELEVANT PORTIONS OF RECORD**

The relevant portions of the record are the Clerks' Papers

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<sup>4</sup> Petitioners' counsel in the Independent Action was threatened with sanctions for presenting evidence of Respondents' fraud on the Court and Petitioners' decided to proceed pro se so that their counsel would not be put in professional jeopardy. The irony of the Superior Court threatening counsel for Petitioners with sanctions for presenting evidence of fraud on the court by the Respondents when Respondents' litigation misconduct was at issue should not be ignored. Now Respondents are attempting to strike Petitioners' Reply in order to prevent this Court from considering their continuing litigation misconduct before this Court.

referenced in the Ericksons' Amended Petition for Review and in their Reply with their Request for Judicial Notice and Respondents' Answer to Petition for Review which contains argument only and no references to any evidence or documents in the record on review.

### **III. ARGUMENT**

#### **A. Respondents' Answer to Petitioners' Amended Petition for Review Contains Misrepresentations of Fact and Law which necessitated Petitioners' Reply.**

If Respondents' Motion to Strike the Reply to their Answer ("Motion to Strike") is granted, Respondents' apparent efforts to continue their pattern of litigation misconduct even before this Court will not be considered by this Court in connection with Petitioners' Amended Petition for Review. In support of their Motion to Strike, Respondents rely entirely on a narrow, not a liberal interpretation, of the word "issues" in RAP 13.4, without specifying RAP 13.4(d) which provides, in part, "A party may file a reply to an answer only if the



answering party seeks review of issues not raised in the petition for review.”

Respondents cite no supporting case law which interprets the word “issues” as used in RAP 13.4(d). Respondents’ narrow interpretation of the word “issues” could only apply if Respondents filed a cross-appeal and would render petitioners for review mute in all cases when respondents make false representations to this Court in their answers to petitions for review. See RAP 10.3(b).

RAP 10.7 provides:

**SUBMISSION OF IMPROPER BRIEF**

If a party submits a brief that fails to comply with the requirements of Title 10 and RAP 18.17, the appellate court, on its own initiative or on the motion of a party, may (1) order the brief returned for correction or replacement within a specified time, (2) order the brief stricken from the files with leave to file a new brief within a specified time, or (3) accept the brief. The appellate court will ordinarily impose sanctions on a party or counsel for a party who files a brief that fails to comply with these rules.

A liberal interpretation, as allowed by RAP 1.2(a), permits the filing of Petitioners' Reply to Respondents' Answer because the Answer relies on misrepresentations of the procedural history of the STOEL RIVES/SPS Action and the Related Actions. Respondents make factual misrepresentations of procedural history of the STOEL RIVES/SPS Action and the Related Actions which are designed to mislead this Court into believing that the STOEL RIVES/SPS Action which is now pending on Amended Petition for Review to this Court was filed after the conclusion of the proceedings in the Independent Action before the King County Superior Court, when, in actuality, the STOEL RIVES/SPS Action was filed while the Independent Action was pending. The STOEL RIVES Action was initially consolidated into the Independent Action by Order dated June 8, 2020 upon Respondents' May 21, 2020 Motion to Consolidate and then deconsolidated when the Superior Court entered Summary Judgment, without advance notice or

opportunity for the Petitioners to prepare and be heard on the sua sponte conversion to Respondents' Motion to Dismiss, 30 minutes after commencement of the June 5, 2020 oral argument on Respondents' Motion to Dismiss. Termination of Review in the Independent Action is now pending on Petitioners' successful Application for Extension of Time to File Petition for Writ of Certiorari to the United States Supreme Court.

**B. Petitioners' Reply to Respondents' Answer to their Amended Petition for Review is not "improper".**

Respondents' make the conclusory statement that Petitioners' Reply to their Answer to the Amended Petition for Review is "improper", without citing to the Rules of Appellate Procedures or any case law. RAP 10.3 refers to "issues" broadly with respect to the contents of briefs. Research through the Legal Institute (affiliated with Cornell University

Law School) and its Wex<sup>5</sup> dictionary for legal definitions of the word issues yielded a broad definition. Wex provides the following first legal definition of the word issue as

1. In general, any point in dispute between different parties<sup>6</sup>.

Petitioners instructed that a search of Washington case law be conducted to find a definition of “issues” on appeal and while they have no guarantee that the search captured all possible decisions, a serious search of Washington case law yielded no case in which the meaning of the word “issue” as used in RAP 10.3 or on appeal could be located.

A major point in dispute between Petitioners and the Respondents in the present action has been Respondents’ use

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<sup>5</sup> Wex is retrievable at <https://www.law.cornell.edu/wex>, most recently retrieved on August 29, 2022, which reads: Welcome to Wex, LII's community-built, freely available legal dictionary and legal encyclopedia.

<sup>6</sup> Retrievable at <https://www.law.cornell.edu/wex/issue>, most recently retrieved on August 29, 2022.

of false pleadings signed by Respondents Glowney and Eidson employed by STOEL RIVES, the use of forged documents authenticated by Respondent Eidson's falsely sworn declaration without personal knowledge and his oral misrepresentations to the Superior Court in the Foreclosure Action, as well as the concealment of the identity of the corporate entity, SPS, which actually employed STOEL RIVES by the false "public" representation that STOEL RIVES was appearing on behalf of "Deutsche Bank National Trust Company as Trustee for Long Beach Mortgage Loan Trust 2006-4" which was a false representation intended to prevent the Ericksons from being fully and fairly heard in the present action and the Related Actions in King County Superior Court.

The issues presented to this Court in the Amended Petition for Review involve violations of the Ericksons' Due Process Rights as the result of continuing frauds on the courts, to which Respondents answered by seeking to strike

Petitioners' argument and evidence that they are continuing to commit fraud on the courts, now on this Court, through false representations of fact and law by counsel for Respondents.

This Court is ultimately responsible for administering justice in the courts of the State of Washington. It is also responsible for regulating the attorneys admitted to practice before the courts of the State of Washington who have the duty under Rule 3.3(a) of the Rules of Professional Conduct (RPC), all of which have been violated by STOEL RIVES attorneys in the present action and the Related Actions as detailed in the record.

Petitioners' Reply is directed to exposing the continuing violation of RPC 3.3(a) in these proceedings, which is an issue arising from Respondents' Answer. The Reply should not be stricken.

**C. In the alternative, Petitioners’ Reply to Respondents’ Answer to their Amended Petition for Review is noncompliant with RAP 9.11, if it applies, the Reply should be allowed in these extraordinary circumstances if this Court concludes that the Reply would otherwise be “improper”.**

It is extraordinary that every officer of the court, representing the Respondents and in the employ of one of the Respondents (STOEL RIVES) persists in violating RPC 3.3(a) in the STOEL RIVES/SPS Action and the Related Actions in the courts of the State of Washington. *See East Fork Hills Rural Ass'n v. Clark County*, 92 Wn.App. 838, 845, 965 P.2d 650 (Wash. App. 1998) (“RAP 9.11 allows supplementation of the trial court record, but only in **extraordinary cases**. RAP 9.11(a); *Washington Federation of State Employees v. State of Washington*, 99 Wash.2d 878, 665 P.2d 1337 (1983))”.

Petitioners could not have anticipated that counsel for Respondents would continue to misrepresent facts and law even before this Court. That is an issue which arose for the

first time in Respondents' Answer to the Amended Petition for Review. As in *Washington Federation of State Employees v. State of Washington*, 99 Wash.2d 878, 665 P.2d 1337, (1983), [I]t is no answer to respondents' motion to say the evidence is too late because it was **created for the benefit of this court.**

**The documents are consistent with the arguments previously made . . .**

The issues of misrepresentations in the Federal District Court (WAWD Case No. 10-cv-1423) are outside the jurisdiction of this Court and are reserved for further proceedings before the Federal District Court, except to the extent that in Respondents' Answer to the Amended Petition for Review, Respondents misrepresented the conclusion of the Federal District Court by re-writing its finding as set forth in the Reply.

If the issue in dispute is whether or not RAP 9.11 bars Petitioners' Requests for Judicial Notice, this Court has the



discretion to waive the application of RAP 9.11 in order to consider the evidence presented for the benefit of this Court. *See Washington Federation of State Employees v. State of Washington*, 665 P.2d at 1342. The judicially noticeable evidence does nothing more than impeach Respondents' false statements of fact and law in its Answer to the Amended Petition for Review.

Finally, in the event that this Court decides not to allow the Requests for Judicial Notice as submitted within the Reply Brief, the attached Appendix 1 should be accepted under RAP 10.7 in which all reference to judicially noticeable documents has been deleted. Petitioners' arguments based on documents referenced to the Clerk's Papers contained therein are sufficient for support of the Reply.

#### **IV. CONCLUSION**

Petitioners' Reply should be allowed along with the Requests for Judicial Notice because it addresses the issue of

continuing fraud on the courts, arising before this Court in Respondents' Answer to the Amended Petition for Review. In the alternative, Appendix 1 should be accepted in lieu of the Reply pursuant to RAP 10.7.

Dated this 29<sup>th</sup> day of August, 2022 at Auburn, Washington.

E-signed: /s/ *John Earl Erickson*

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Dated this 29<sup>th</sup> day of August, 2022 at Auburn, Washington.

E-signed: /s/ *Shelley Ann Erickson*

---

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### **CERTIFICATE OF COMPLIANCE**

The foregoing Answer to Respondents' Motion to Strike Petitioners' Reply for Amended Petition for Review complies with RAP 18.17 in that it is produced using a word processing

program, is prepared in 14 point font, double-spaced except as otherwise allowed, and I am informed that the foregoing Petition for Review consists of 2,751 words inclusive of footnotes and the cover page and exclusive of the signature blocks and Certifications according to the word count tool for the word processing program with which it has been prepared.

E-signed: /s/ *Shelley Ann Erickson*

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Shelley Ann Erickson, *in propria persona*

### **CERTIFICATE OF SERVICE**

I hereby certify that on August 29, 2022, I caused a true and correct copy of the Answer to Respondent's Motion to Strike Reply on Amended Petition for Review to be served via E-Filing as set forth below:

Attorney Ann Dorsheimer  
STOEL RIVES, LLP  
Attorney for Respondents Power, STOEL RIVES, SPS,  
Eidson and Glowney  
600 University Street, Suite 3600  
Seattle, Washington 98101

Dated this 29<sup>th</sup> day of August, 2022 in Auburn, Washington.

E-signed: /s/ *Shelley Ann Erickson*

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Shelley Ann Erickson, *in propria persona*

# APPENDIX 1

NO. 101047-8  
IN THE SUPREME COURT OF WASHINGTON

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John Earl Erickson and  
Shelley Ann Erickson, *in propria persona*,  
Plaintiffs/Appellants,

v.

VANESSA POWER AND STOEL AND  
RIVES AND SELECT PORTFOLIO  
SERVICING, JOHN GLOWNEY AND  
WILL EIDSON, THOMAS REARDON,  
AND LANCE OLSEN,  
Defendants/Respondents.

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APPELLANTS' REPLY TO RESPONDENTS' ANSWER TO  
PETITION FOR REVIEW OF APRIL 25, 2022  
DECISION OF COURT OF APPEALS, DIVISION ONE,  
RECONSIDERATION DENIED, MAY 24, 2022

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On Appeal from King County Superior Court  
No. 20-2-08633-9 KNT  
Judge Ken Schubert Presiding

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## TABLE OF CONTENTS

REPLY INTRODUCTION	1
REPLY STATEMENT OF THE CASE	8
A. Erickson I: 2010 Federal Court Action	10
B. Erickson II: the 2014 Foreclosure Action	11
C. Erickson III, which the Respondents designate as the 2019 CR 60 Action and which the Ericksons characterize as the Independent Action recognized under CR 60(c)	16
D. Erickson IV, which the Respondents have now designated as the 2020 Service Provider Action and which Petitioner has consistently identified as the STOEL RIVES/SPS Action	17
REPLY ARGUMENT	21
I. The Petition for Review raises issues of substantial public interest in preventing litigation misconduct involving the filing of false pleadings, the use of false declarations authenticating forged documents and material misrepresentations of law and fact by officers of the court	21
A. Misidentification of the Corporate Entity Appearing in the Actions	22

B. Misrepresentations of Determinations by Courts	24
1. Re-writing court opinions by deleting actual language and substituting Respondents’ preferred language in brackets	24
a. March 2, 2011 Opinion in the 2010 Federal District Court Case	24
b. April 25, 2022 Opinion of the Court of Appeals	27
C. New evidence of forgery	28
II. Whether the alleged use of false evidence in the Foreclosure Action violated Petitioners’ Due Process Rights raise significant questions of law under Article One, Section 3 of the <i>Constitution of the State of Washington</i> and the Fourteenth Amendment to the <i>Constitution of the United States</i> .	31
CONCLUSION	32
CERTIFICATE OF COMPLIANCE	33
CERTIFICATE OF SERVICE	34

## TABLE OF AUTHORITIES

### **Constitution of the United States**

Fourteenth Amendment, Section 1	21, 31
Due Process Rights	passim

### **Constitution of the State of Washington**

Article One, Section 3	21, 31
Due Process Rights	passim

### **United States Supreme Court Cases**

<i>McDonough v. Smith</i> , 139 S. Ct. 2149, 2155, 204 L. Ed. 2d 506 (2019)	31
--	----

### **Washington Appellate Cases (Supreme Court and Courts of Appeal)**

<i>Corporate Loan &amp; Sec. Co. v. Peterson</i> , 64 Wn.2d 241, 243-244, (Wash. 1964)	7, 16
<i>State Farm Fire &amp; Cas. Co. v. Ford Motor Co.</i> , 186 Wash.App. 715, 722, 346 P.3d 771 (Wash. App. 2015)	28
<i>Wiese v. CACH, LLC</i> , 189 Wash.App. 466, 478, 358 P.3d 1213 (Wash. App. 2015)	7, 16



**Revised Code of Washington (RCW)**

RCW 9A.60.020 31

**Washington Rules of Appellate Procedure (RAP)**

RAP 18.17 33

**Washington Rules of Civil Procedure (CR)**

CR 56(f) 18, 19, 20

CR 60 5, 16

CR 60(b) 16

CR 60(c) 16

**Other Authority**

**United States Court of Appeals for the First Circuit**

*Emigrant Residential, LLC v. Pinti, et al*, 20  
Appeal No. 21-1330 (most recently retrieved on  
August 19, 2022 and retrievable at  
<https://www.jdsupra.com/legalnews/1st-circuit-grants-homeowners-1860373/>)

## REPLY INTRODUCTION

Regrettably, Respondents' Answer to the Petition for Review continues a pattern of litigation misconduct in which they<sup>1</sup> have engaged throughout the litigation in the courts of the State of Washington in three (3) related actions:

(1) The Foreclosure Action was filed by Respondent Attorneys Eidson and Glowney, employed by Respondent STOEL RIVES LLP (STOEL RIVES), in the name of *Deutsche Bank National Trust Company, as Trustee for Long Beach Mortgage Loan Trust 2006-4 v. Erickson, et al.*, in King County Superior Court as Case No. 14-2-00426-5 KNT on January 3, 2014. Summary Judgment in the Foreclosure Action was entered on August 27, 2015. Petitioners' Appeal No. 73833-0-1 was adversely decided by the Court of Appeals on February 13, 2017 and their Petition for Review was denied on

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<sup>1</sup> Other entities, not parties in the related cases, created this controversy by a bad faith offer of a loan modification agreement in May, 2009 with which Petitioners fully complied in good faith.

August 2, 2017.

(2) The Independent Action was filed in the name of *Erickson, et al. v. Deutsche Bank National Trust Company, as Trustee for Long Beach Mortgage Loan Trust 2006-4*, in King County Superior Court Case No. 19-2-12664-7 KNT.

Summary Judgment was granted approximately 30 minutes after oral argument on the Motion to Dismiss commenced

[REDACTED]

[REDACTED]. The *sua sponte* conversion of the Motion to Dismiss to a Motion for Summary Judgment without notice of the intended conversion or opportunity to file opposition to the unfiled Motion for Summary Judgment having been provided to Petitioners.

The Court of Appeals affirmed Summary Judgment in the Independent Action in No. 81648-9 on November 29, 2021

[REDACTED]. Petitioners filed their Petition for Review with this Court on December 28, 2021. The Ericksons' Petition for

Review was denied on May 4, 2022 in Supreme Court No. 100511-3. Filing of Ericksons' anticipated Petition for Writ of Certiorari has been extended by Order of Justice Elena Kagan to no later than October 1, 2022. [REDACTED]

(3) The present action, which the Ericksons refer to as the STOEL RIVES/SPS Action<sup>2</sup>, was filed on May 7, 2020 (CP 1-141), while the Independent Action was pending<sup>3</sup>, and proceeded in the name of *Erickson, et al. v. Power, et al.* King County Superior Court No. 20-2-08633-9 against Defendants Vanessa Power ("POWER"), STOEL RIVES, Select Portfolio Services, Inc. ("SPS"), EIDSON and GLOWNEY (hereinafter

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<sup>2</sup> Respondents describe this case as an action against the "Service Providers".

<sup>3</sup> The present action was consolidated [REDACTED] with and into the Independent Action on Respondents May 21, 2020 Motion [REDACTED]. The STOEL RIVES/SPS Action was then procedurally de-consolidated from the Independent Action upon entry of the Order granting Summary Judgment entered without advance notice of the *sua sponte* conversion until 30 minutes into the parties argument on Respondents' Motion to Dismiss on June 5, 2020 [REDACTED].

the “Respondents”). Summary Judgment was granted in favor of the Respondents on March 26, 2021 and the Ericksons’ Motion for Reconsideration was denied on May 4, 2021. Final Judgment was entered on that same date.

The Ericksons appealed timely on May 28, 2021 as No. 82755-3. Judgment was affirmed by the Washington Court of Appeals on April 25, 2022. After denial of the Ericksons’ May 12, 2022 Motion for Reconsideration in Appeal on May 24, 2022, the Ericksons filed their Petition for Review before this Court on June 23, 2022 as Supreme Court No. 101047-8. The Petition for Review was overlength and was allowed to be amended. The Amended Petition for Review was filed on July 6, 2022 and is now pending before this Court.

In their August 4, 2022 Answer to the Ericksons’ Petition for Review now pending before this Court, SPS, STOEL RIVES and the named Respondent attorneys, represented by STOEL RIVES, continue to misrepresent or

conceal material procedural and substantive facts and misstate or disregard applicable law in order to mislead the Court. That continuing course of litigation misconduct displayed in the Respondents' Answer necessitates this Reply.

In their Answer to the Petition for Review, Respondents create a false history of this action and the related actions. For example, in their Answering Introduction, Respondents again try to mislead the Court by making it appear that the Complaint in the Independent Action was filed under CR 60 and that the in the present action was initiated after Summary Judgment was granted in the Independent Action. It was not.

The present action was initiated while the Independent Action was pending. Respondents write, "In an effort to circumvent the foreclosure judgment, in 2019 the Ericksons filed an action under CR 60 against the Trust, alleging fraud based on the theory that the Trust does not hold the original,

endorsed-in-blank Note.<sup>4</sup> That case was dismissed, affirmed on appeal, and review was denied by this Court. . . . The Ericksons **then** filed suit against the Trust’s service providers: its loan servicer and counsel. The Ericksons made the same factual and legal assertions rejected by multiple courts in prior proceedings.<sup>5</sup> (Emphasis added.)

First of all, the Ericksons are not attempting to “circumvent the foreclosure judgment”. They are seeking relief from foreclosure judgment which they allege and have been

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<sup>4</sup> Petitioners’ Independent Action, alleged for the first time, that the January 3, 2014 Complaint contained material misrepresentations by Respondents Eidson and Glowney, who it was later discovered actually appeared on behalf of SPS and not Deutsche Bank National Trust Company, as Trustee for Long Beach Mortgage Loan Trust 2006-4.

<sup>5</sup> This assertion is misleading. Even the Respondents’ Motion to Consolidate the STOEL RIVES/SPS Action with and into the Independent Action [REDACTED] asserts that the fact pattern is similar to the facts alleged in the Complaint in the Independent Action and does not assert that the allegations of fraud and suspected forgery had been raised in “multiple prior cases” because the allegations of fraud and suspected forgery were made for the first time in the Independent Action.

seeking to prove was procured by fraud on the court and is, therefore, void. Relief from a void judgment is allowed by law and may be sought and was sought in the Independent Action. See *Corporate Loan & Sec. Co. v. Peterson*, 64 Wash.2d 241, 243-44, 391 P.2d 199 (1964) and *Wiese v. CACH, LLC*, 189 Wash.App. 466, 478-479, 358 P.3d 1213 (Wash. App., 2015).

The present action was filed while the Independent Action was pending. The STOEL RIVES/SPS Action was not “then” filed after Summary Judgment was granted in the Independent Action as the Respondents attempted to make it appear by their deceptive chronology. See footnote 3, above.

The Ericksons discovered new evidence regarding the published employment history of one of the purported endorsers of the document purporting to be the Ericksons’ “original Note” which led to the filing of the Independent Action for fraud on the court. The Ericksons then finally located the individual whose name appears as one of the



endorsers after years of unsuccessful searches not only by the Ericksons but many other homeowners by employing a private investigator who used proprietary search tools which led to the the location of Jess Almanza (CP 2436-2438). The pending discovery of new evidence resulted in the Declaration of purported endorser Jess Almanza could not possibly have endorsed the document purporting to be the Ericksons' original Note. (CP 2495-2525).

This Reply is necessary to expose the persistent efforts by officers of the court, who actually represent Select Portfolio Servicing, Inc. ("SPS"), to commit fraud upon the court which continue even in these proceedings. Petitioners will endeavor to highlight some of the continuing misrepresentations of fact and law in this Reply.

### **REPLY STATEMENT OF THE CASE**

Many of Respondents' misrepresentations of fact and law are contained in their Statement of the Case in opposition

to this Court granting the Ericksons' Petition for Review in which Respondents attempt to create a false procedural and substantive history of this action and the related actions.

Contrary to the record, Respondents continue to insist "The Ericksons have made no payments on the Note since July 2009." The controversy originated when nonparty JPMorgan Chase Bank, N.A. ("Chase"), operating in the name of Washington Mutual Bank (which no longer existed following its seizure by the FDIC on September 25, 2008), induced the Ericksons to enter into a trial loan modification agreement under which the Ericksons made the required payments from June, 2009 through August, 2009 at which time they were led to believe that they would receive a "permanent modification" of the claimed loan obligation (CP 2369). Chase accepted payments of \$3,224.00 per month through October, 2009 (CP 2370-2380) and then notified the Ericksons that they did not qualify for a permanent modification. (CP 2384). The

Ericksons were then threatened with nonjudicial foreclosure of the home they built with their own hands and had occupied as their homestead since 1983.

**A. Erickson I: 2010 Federal Court Action.**

Respondents assert that in 2010, the Ericksons sued the Trust. The Ericksons did not sue the “Trust” in the 2010 Federal Court Action. The parties to the Ericksons’ action in King County Superior Court No. 10-2-29165-2, which was removed to the Federal District Court and proceeded as *Erickson v. Long Beach Mortg. Co., et al.*, Case No. 10-1423-MJP, were identified by the Federal District Court as “LONG BEACH MORTGAGE CO., WASHINGTON MUTUAL BANK, DEUTSCHE BANK NATIONAL TRUST COMPANY, and CHASE BANK” [REDACTED]. Counsel for Chase filed the Notice of Removal to the Federal District Court Action behalf of Chase and Deutsche Bank National Trust Company as Trustee for Long Beach Mortgage Loan

Trust 2006-4. [REDACTED]

Respondents state that the Ericksons claimed that the “Trust” could not produce the Ericksons’ original Note and **“that claim was rejected by the District Court, which held that “[the Trust] provide[d] evidence demonstrating their ownership of the note, which the Ericksons do not credibly challenge.”** Emphasis added. The Federal District Court found that the Defendants demonstrated “ownership of the note”. [REDACTED] The District Court did not indicate which of the Defendants identified in the case caption appearing on the Opinion and Order Granting Summary Judgment [REDACTED] demonstrated ownership of the document identified as the Ericksons’ Note.

#### **B. Erickson II: the 2014 Foreclosure Action**

Respondents state, “In 2014, the Trust filed a foreclosure action against the Ericksons in King County Superior Court to foreclose on the Note and Deed of Trust. See CP 2027-61:

January 3, 2014 Complaint in *Deutsche Bank National Trust Co. as Trustee v. Erickson, et al.*, King County Superior Court Case No. 14-2-00426-5 KNT) and assert, “The copy of the Note that was attached to the complaint inadvertently did not include the back side of the third page of the Note, which reflects the Note was endorsed “in blank.” The Trust corrected this by filing a complete copy of the Note in support of summary judgment. CP 2272-93.” This assertion is one of the ultimate facts in dispute based on newly discovered evidence.

Respondents continue, writing, “At the summary judgment hearing, the Trust brought the original Note to court. To address the Ericksons’ contentions of fraud and forgery, the hearing was continued to allow the Ericksons’ forensic expert to inspect the Note. CP 2243:11-18”. In actuality, Respondent Eidson of STOEL RIVES, brought the document purporting to be the Ericksons’ “original Note” to the hearing on the Motion for Summary Judgment to mislead the Superior Court with his

argument that “The copy of the Note that was attached to the complaint inadvertently did not include the back side of the third page of the Note, which reflects the Note was endorsed “in blank.” The Ericksons had not pleaded allegations of fraud and forgery in answer to the January 3, 2014 Complaint. They were simply trying to identify the standing of the purported Plaintiff based on false allegations of corporate status in the Complaint.

Respondents assert “The Trust corrected this by filing a complete copy of the Note in support of summary judgment. CP 2272-93.” This “correction” without filing an Amended Complaint deprived the Ericksons of their right to notice and opportunity to be heard in defense against an Amended Complaint (a violation of Due Process) because the document attached to the January 3, 2014 Complaint did not display an endorsement. The Complaint was never amended preventing the Ericksons from answering the required Amended

Complaint.

Petitioners' forensic expert inspected the Note, but the Ericksons were not permitted to view the Note. They, along with the videographer who sought to view the document purporting to be the "original Note", were locked out of the room in which the examination took place. (CP 238-240). When the hearing resumed a week later, CP 2246, the Ericksons did not present a report from the document examiner. The issue of the authenticity of the suddenly appearing endorsement was not raised. The examination was incomplete. The Ericksons did not have the opportunity to view the document. On August 27, 2015, summary judgment was granted in the Trust's favor and judgment and a decree of foreclosure was entered (the "Foreclosure Judgment"). CP 2193-2201.

Respondents argue that the Court of Appeals affirmed the Foreclosure Judgment, and this Court denied review, citing

*Deutsche Bank National Trust Company, as Trustee for Long Beach Mortgage Loan Trust 2006-4 v. Erickson*, 197 Wn. App. 1068 at \*7-8 (2017) (unpublished), holding collateral estoppel barred the Ericksons from arguing the Trust did not hold the original Note based on the opinion of the Federal District Court and finding “[e]ven if the Ericksons were not collaterally estopped from their substantive arguments, a holder of a note endorsed in blank is entitled to enforce that note” and **“because the Trust “presented an original, signed, endorsed in blank note at the summary judgment hearing, it was entitled to summary judgment and to enforce the note against the Ericksons.”** (Emphasis added.) The issue that the document purporting to be the “original Note” displayed a forged endorsement was not raised, litigated or adjudicated in either the Federal District Court Action [REDACTED] or Foreclosure Action [REDACTED].



**C. Erickson III, which the Respondents designate as the 2019 CR 60 Action and which the Ericksons characterize as the Independent Action recognized under CR 60(c)**

Respondents assert that [o]n May 13, 2019, the Ericksons filed a complaint seeking to set aside the Foreclosure Judgment “under CR 60” and restrain a foreclosure sale. CP 2027-61. The Petitioners filed their Independent Action recognized under CR 60(c) and acknowledged under *Corporate Loan & Sec. Co. v. Peterson*, 64 Wash.2d at 243-44 (Wash. 1964) and *Wiese v. CACH, LLC*, 189 Wash.App. at 478-479 (Wash. App., 2015).

The Ericksons were not proceeding under CR 60(b) in the Independent Action. If they were seeking to do so, they would have been filed as a motion and not an Independent Action. The Independent Action was dismissed on summary judgment (CP 2063–66) based on the *sua sponte* conversion of the purported Defendants’ pending Motion to Dismiss to proceedings on Summary Judgment 30 minutes after oral

argument on the Motion to Dismiss Commenced. [REDACTED]

[REDACTED].

The Court of Appeals affirmed the Order Granting Summary Judgment and this Court denied review on May 4, 2022. Petitioners are entitled to file their Petition for Writ of Certiorari before the United States Supreme Court on application for extension of time to file Petition for Writ of Certiorari in 22A111 which was granted by Justice Elena Kagan on August 9, 2022. [REDACTED]

**D. Erickson IV, which the Respondents have now designated as the 2020 Service Provider Action and which Petitioner has consistently identified as the STOEL RIVES/SPS Action**

The Ericksons filed this case on May 7, 2020 against Vanessa Power (“POWER”), STOEL RIVES, Select Portfolio Services, Inc. (“SPS”), EIDSON and GLOWNEY (hereinafter the “Respondents”) CP 1–141. The Ericksons sought \$10 million for “compensation and recoupment” and asserted

claims against Respondents while the Independent Action was pending. The present action was consolidated [REDACTED] with and into the Independent Action on motion of Respondents [REDACTED] and was then procedurally de-consolidated upon entry of the premature Order granting Summary Judgment entered without advance notice of the *sua sponte* conversion until 30 minutes into the parties argument on Respondents' Motion to Dismiss on June 5, 2020 [REDACTED] [REDACTED].

In their continuing efforts to mislead this Court, Respondents discuss the Ericksons CR 56(f) Motion for Continuance of Summary Judgment only in the context of the Ericksons' Motion to Disqualify Judge Andrea Darvas, who was then the assigned judge, and their CR 56(f) motion to continue the hearing until a judge who was not made a witness to the alleged fraud on the court in the Foreclosure Action, referring to CP 2394-2405. Respondents ignore the Ericksons'

Rule 56(f) Motion which is relevant on appeal: the pendency of development of new evidence because the Ericksons had discovered the whereabouts of Jess Almanza, whose initials suddenly appeared on the reverse side of the document purporting to be the Ericksons' original Note at the time of the Motion for Summary Judgment in the Foreclosure Action and were seeking to conduct his deposition within the time frame allowed by the Scheduling Order (CP 146).

Respondents use the red herring argument about the Motion to Disqualify Judge Darvas in an attempt to mislead this Court into believing that the only CR 56(f) Motion involved the disqualification of Judge Darvas, ignoring Petitioners' CR 56(f) Motion to continue the summary judgment in order for them to pursue the deposition of Jess Almanza (CP 2436-2438). Apparently, the Court of Appeals terminated review by affirming the denial of that pertinent CR 56(f) Motion based on the misunderstanding that the Ericksons

had failed to establish their diligence in seeking to locate Jess Almanza.<sup>6</sup> Respondents now admit, “At the hearing, the trial court considered all pending motions and all evidence and filings submitted, including the Almanza Declaration. See CP 3508-15,” but falsely characterize the determination of the Superior Court, asserting “The trial court denied the Ericksons’ request under CR 56(f) as unsupported and granted summary judgment in favor of Stoel Rives.” Respondents thereby attempt to distract this Court from the substantial public interest involved where evidence of forgery is identified in a civil proceeding raising a significant issue under the Due

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<sup>6</sup> Denial of discovery of new evidence regarding the authenticity of the document purporting to be the homeowners’ original Note was recently addressed by the First Circuit Court of Appeals on June 17, 2022 in *Emigrant Residential, LLC v. Pinti, et al*, Appeal No. 21-1330 (most recently retrieved on August 19, 2022 and retrievable at <https://www.jdsupra.com/legalnews/1st-circuit-grants-homeowners-1860373/>) in which the First Circuit held that it was an abuse of discretion to deny the homeowners the opportunity for discovery regarding the authenticity of the document purporting to be the original Note after years of litigation in multiple cases.

Process clause in Section One of the Fourteenth Amendment to the *Constitution of the United States of America* and Article One, Section 3 of the *Constitution of the State of Washington*.

This Petition for Review should be granted because it the issues raised are significant and are of substantial public interest.

## **REPLY ARGUMENT**

### **I. The Petition for Review raises issues of substantial public interest in preventing litigation misconduct involving the filing of false pleadings, the use of false declarations authenticating forged documents and material misrepresentations of law and fact by officers of the court**

Petitioners cannot imagine an issue of more substantial public interest than the issue of whether or not fraud on the court by the use of false pleadings, supported by forged documents, authenticated by false declarations and proceeding on misrepresentations of fact and law committed by officers of the court will be tolerated in the State of Washington.

**A. Misidentification of the Corporate Entity Appearing in the Actions**

For the first time in Answer to the Petition for Review, Respondents try to contradict their own admission in their June 4, 2020 Answer at page 2, lines 1-3 (CP 2333-2336) and the email admission of a representative of Deutsche Bank National Trust Company (Ronaldo Reyes, CP 233) that Respondent STOEL RIVES and its named Respondent lawyers represented Respondent SPS. By their own admission and the admission of a representative of Deutsche Bank National Trust Company, STOEL RIVES and its named attorneys represented SPS since 2013. STOEL RIVES represented SPS and not the named Plaintiff<sup>7</sup> in the Foreclosure Action and the named

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<sup>7</sup> The named Plaintiff in the Foreclosure Action, King County Superior Court No. No. 14-2-00426-5 KNT (Appeal No. 73833-0-1), was identified as “Deutsche Bank National Trust Company as Trustee for Long Beach Mortgage Loan Trust 2006-4”. SPS is never mentioned as appearing by counsel in the Foreclosure Action when it is now admitted that the STOEL RIVES Respondents were retained by and represented SPS in the Foreclosure Action.

Defendant<sup>8</sup> in the Independent Action. The assertion that STOEL RIVES “publicly represented that the Trust (Deutsche Bank as Trustee) as counsel of record” (Answer, page 12) acknowledges the fraudulent representation of the identity of the party which retained and was represented by the STOEL RIVES Respondents. The “public” representation that STOEL RIVES appeared for “Deutsche Bank as Trustee” is false. It has been admitted that STOEL RIVES is actually counsel for SPS.

In these proceedings, Respondents are bound to their June 4, 2020 Answer to the Ericksons’ Complaint, to wit, that STOEL RIVES and its named lawyers represented SPS in the Foreclosure Action and in the Independent Action. That

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<sup>8</sup> The named Defendant in the Independent Action, King County Superior Court No. King County Superior Court Case No. 19-2-12664-7 KNT (Appeal No. 81648-9), was identified as “Deutsche Bank National Trust Company as Trustee for Long Beach Mortgage Loan Trust 2006-4” when it is now admitted that the STOEL RIVES Respondents were retained by and represented SPS in the Foreclosure Action.



admission is a judicial admission and cannot be relitigated in these proceedings. Furthermore, the June 4, 2019 email of Ronaldo Reyes, who is undisputedly an authorized representative of Deutsche Bank National Trust Company is an evidentiary admission that STOEL RIVES represents SPS. Respondents' attempt to use their own false "public" representation that STOEL RIVES represented the "Trust" to escape from the judicial and evidentiary admissions in the record that STOEL RIVES actually represents SPS is yet another misrepresentation to the court by an officer of the Court.

## **B. Misrepresentations of Determinations by Courts**

### **1. Re-writing court opinions by deleting actual language and substituting Respondents' preferred language in brackets**

#### **a. March 2, 2011 Opinion in the 2010 Federal District Court Case**

Counsel for the Respondents have persisted in re-writing

opinion in the 2010 Federal District Court case in this action. They contend that the Ericksons' longstanding claim that the entities they named as original parties in the action removed to the Federal District Court were obligated to produce the authentic, original Note was rejected by the District Court, which, they write, found that "**the Trust provide[d] evidence demonstrating their ownership of the note, which the Ericksons do not credibly challenge.**" (Emphasis added.)

Answer to Petition for Review, page 5. This same impermissible editorial change was made in Respondents' Brief to the Court of Appeals on December 1, 2021, page 4. See also Respondents' December 31, 2020 Memorandum in Support of Motion for Summary Judgment at page 3, lines 21-24 (CP 2008):

The Ericksons' claim that the Trust could not produce the Ericksons' original Note was rejected by the District Court, which held that "**the Trust provide[d] evidence demonstrating their ownership of the note, which the Ericksons do not credibly challenge.**" (Emphasis

added.)

The District Court actually found, “. . . **Defendants** have provided evidence demonstrating their ownership of the note, which the Ericksons do not credibly challenge.”

[REDACTED]

[REDACTED] The difference between the actual finding of the District Court and the version of the finding created by Respondents’ counsel is material. The identity of and relationship between the Defendants identified in the Federal District Court Action and the entity identified in the Foreclosure Action and the Independent Action which Respondents refer to as the “Trust” is essential to the application of the doctrine of collateral estoppel. Counsel and parties are not permitted to re-write language in opinions of courts by removing courts’ actual language and editing language in the opinions by courts by the use of brackets to suit Respondents’ preferred narrative, because to do so is a

misrepresentation of law.

**b. April 25, 2022 Opinion of the Court of Appeals**

Consistent with the impermissible editorial license deployed by counsel for the Respondents in their Answer to the Petition for Review, counsel uses the bracket device to edit the April 25, 2022 Opinion of the Court of Appeals in order to make it appear that the Court of Appeals terminated review based on collateral estoppel rather than the erroneous determination that the Almanza Declaration did not raise a material issue of fact.

Respondents write:

**See Opinion at 14 n. 74 (“Because we can affirm on this ground [collateral estoppel] alone, we decline to reach the question of whether the Ericksons failed to establish fraud.”); Opinion at 9 n. 50 (“Because we affirm on this basis [denial of CR 56(f)], we do not reach the trial court’s conclusion that Almanza’s declaration did not present a genuine issue of material fact.”). (Emphasis added.)**

The Court of Appeals first declined to review the merits of

Petitioners' contention that the Almanza Declaration presented a genuine dispute of material fact (footnote 50), which is also evidence that the document purporting to be the Ericksons' original Note endorsed in blank displays a forged endorsement and is new evidence of fraud on the court. The Court of Appeals then declined to determine whether or not a forged endorsement on the document purporting to be the Ericksons' original Note based on collateral estoppel by disregarding the newly discovered evidence (footnote 74). "A number of courts have concluded that the opportunity to introduce evidence not before the fact finder in the prior action is a new procedural opportunity that precludes application of collateral estoppel." *State Farm Fire & Cas. Co. v. Ford Motor Co.*, 186 Wash.App. 715, 726, 346 P.3d 771 (Wash. App. 2015)

**C. New evidence of forgery**

Respondents have now shifted their position regarding the Ericksons' original contention in the Federal District Court

Action which challenged the standing of the named Defendants based on the legal requirement that an entity seeking the remedy of foreclosure must be in possession of the original Note to embrace the proposition that the document in their possession not be a forgery. The Ericksons did not raise the issue that the document purporting to be the original Note was a forgery in the Federal District Court Action or in the Foreclosure Action. The possibility that the endorsement of Jess Almanza was a forgery was not raised until the May 13, 2019 Complaint in the Independent Action upon the discovery of evidence in August, 2018 that Jess Almanza's published profile on LinkedIn admitted his employment as Vice President for Washington Mutual Bank from August, 1995 through July, 2006 but did not identify employment as Vice President of Long Beach Mortgage Company.

Thereafter, the Ericksons sought to locate Jess Almanza in order to obtain evidence of his authority to endorse Notes

payable to Long Beach Mortgage Company at the time of the endorsement “in blank” of the document purporting to be the Ericksons’ original Note and, when he was located in January, 2021, they obtained his Declaration that he was not physically working at Washington Mutual Bank in March, 2006 when the Ericksons’ March 3, 2006 Note was made payable to Long Beach Mortgage Company (Almanza Declaration ¶9, CP 2496.) It was physically impossible for Jess Almanza to have endorsed the Ericksons’ March 3, 2006 Note and he did not endorse the document purporting to be the Ericksons’ original Note. (Almanza Declaration ¶20, CP 2498.) The apparent endorsement displayed on the reverse side of the Ericksons’ purported “original Note” was not made by Jess Almanza. As a matter of undisputed fact, as of February 5, 2021, Jess Almanza did not even know what was meant by the term “endorsement”. (Almanza Declaration ¶16, CP 2498.)

The use of forged documents as fabricated evidence to

make it appear that a party is entitled to judgment and the remedy of foreclosure violates RCW 9A.60.020. The use of forged documents in the courts of the State of Washington uttered by officers of its courts is an issue of substantial public interest which should not be tolerated.

**II. Whether the alleged use of false evidence in the Foreclosure Action violated Petitioners' Due Process Rights raise significant questions of law under Article One, Section 3 of the *Constitution of the State of Washington* and the Fourteenth Amendment to the *Constitution of the United States*.**

Whether or not it is a violation of Petitioners' due process for Respondents to manufacture forged (fabricated) documents and cause the forged documents to be uttered by officers of the court in the related cases actions involves significant questions of law directly impugning the integrity of the courts. *Cf. McDonough v. Smith*, 139 S. Ct. 2149, 2155, 204 L. Ed. 2d 506 (2019) Summary judgment must not be granted on the grounds of collateral estoppel when there is new



evidence demonstrating a genuine dispute of material fact as to whether or not a document used in litigation is a forgery. The factual dispute must be resolved by trial.

### **CONCLUSION**

The Petition for Review should be granted in the public interest and remand for trial to cure the violation of the Ericksons' Due Process Rights.

Dated this 19<sup>th</sup> day of August, 2022 at Auburn, Washington.

E-signed: */s/ John Earl Erickson*

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Dated this 19<sup>th</sup> day of August, 2022 at Auburn, Washington.

E-signed: */s/ Shelley Ann Erickson*

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## **CERTIFICATE OF COMPLIANCE**

The foregoing Reply to Answer to Amended Petition for Review complies with RAP 18.17 in that it is produced using a word processing program, is prepared in 14 point font, double-spaced except as otherwise allowed, and I am informed that the foregoing Petition for Review consists of [REDACTED] 4,927 words inclusive of footnotes and exclusive of the cover page, Table of Contents, Table of Authorities, signature blocks and Certifications according to the word count tool for the word processing program with which it has been prepared.

E-signed: /s/ *Shelley Ann Erickson*

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*Shelley Ann Erickson, in propria persona*

## CERTIFICATE OF SERVICE

I hereby certify that on August 19, 2022, I caused a true and correct copy of the Reply to Respondents' Answer to Petition for Review and the Request for Judicial Notice with Exhibits 1-8 to be served via E-Filing as set forth below:

Attorney Ann Dorsheimer  
STOEL RIVES, LLP  
Attorney for Respondents Power, STOEL RIVES, SPS,  
Eidson and Glowney  
600 University Street, Suite 3600  
Seattle, Washington 98101

Dated this 19<sup>th</sup> day of August, 2022 in Auburn, Washington.

E-signed: */s/ Shelley Ann Erickson*

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Shelley Ann Erickson, *in propria persona*

**SHELLEY ANN ERICKSON - FILING PRO SE**

**August 29, 2022 - 3:16 PM**

**Transmittal Information**

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**Appellate Court Case Title:** John Erickson, et ano v. Stoel Rives, LLP et al

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