No. 19-408

IN THE

Supreme Court of the United States

GAREY NEHRKE,

Petitioner,

v.

WELLS FARGO BANK N.A.,

Respondent.

On Petition for a Writ of Certiorari to the Florida Fourth District Court of Appeals

PETITION FOR A WRIT OF CERTIORARI

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Pro Se Petitioner

QUESTIONS PRESENTED

The petitioner, his family and millions of Americans have been violated of their Constitutional Rights for over a decade due to the ongoing Foreclosure Crisis. In trying to rectify numerous wrongs committed against him and his family by Wells Fargo, they have encountered countless unlawful acts of retaliation for whistleblowing. They have been stonewalled in their pursuit of justice, as Wells Fargo has been assisted by Courts and leadership in avoiding its unlawful acts against them. If preventing manifest injustice is the mandate set forth by this Supreme Court, then rectifying the decades-long injustices inflicting undue and inexcusable harm on the petitioner, his family and millions of other victims must be first priority. The peoples Justice System and Constitution that bore it, can no longer afford the years of failures in favor of habitual wrongdoer Wells Fargo and others, as it has permanently marred the system by leaving millions questioning its validity.

It is undeniable the GSEs are State-actors, as Fannie is operating under Treasury agreement with Wells Fargo **"solely as financial agent of the United States."** This stands true for Freddie Mac, as the government Totally Controls both entities, and as such has been wrongfully financially benefiting from millions of unlawful foreclosures. These mass unlawful foreclosures have directly led to persistent economic problems, including record poverty, homelessness, prescription drug abuse and alcoholism, brought on by spikes in anxiety, depression, PTSD and suicides. These serious issues are unacceptable in this Constitutional society and hit at the heart of our country's defenses, as many active and retired military families have been victimized, as is the case herein.

It is no secret, especially herein this Court, that mass foreclosure fraud has been committed by Wells Fargo and others. These egregious frauds on the Courts

include lack of standing, as the unconstitutionally created FHFA utilized State-actors Fannie Mae and Freddie Mac (GSEs), along with Wells Fargo and other national banks to unlawfully utilize state Courts to commit mass fraud with countless false and misleading statements, by filing numerous fabricated documents within schemes to gain unjust riches through facially void judgements. Through these schemes, millions of Home Equity Lines of Credit (HELOC) were foreclosed in violation of Uniform Commercial Code (UCC) and state law, including FL law herein. The fact that the government has financially benefitted through its unconstitutional Net Worth Sweep (NWS), has led to talk of some kind of wrongful backdoor immunity deal with factions of the government, protecting Wells Fargo and other wrongdoers, that has unconstitutionally stonewalled millions of American victims within the Courts.

Wells Fargo and others utilized the GSEs and multiple unlawful RMBS securitizations and rehypothecations to force millions of unsuspecting American homeowners into default by improperly manipulating government mandated modification. This directly led to mass foreclosure fraud, and forced many into bankruptcy to protect their family's homes, including the petitioner's daughter and previous petitioner Nicole Barone (17-1601). Utilizing these undisclosed RMBS transactions in violation of SEC securities laws, Wells Fargo and others collected unjust riches well in excess of mortgage notes by unlawfully utilizing millions of Americans homes without disclosure, consent and authority, and without applying benefits to the note balances. Additionally, under NEMO DAT QUOD NON HABET, Wells Fargo and others, including the GSEs are not Legal Owners and have no right to "sell" and/or "pledge" the homeowners rights.

This case raises vital issues of federal jurisdiction over Wells Fargo, national banks and the GSEs as *de*

facto State-actors. It raises questions over Constitutional Rights, violations of the UCC and state laws, harassment and abuse of whistleblowers, mass foreclosure & modification fraud, securities laws over undisclosed mortgage securitization (RMBS), rehypothecation and secondary default insurances and derivatives. Thus, the questions presented are:

1. Whether Wells Fargo and others under National Bank Act, 12 U.S.C. 1 *et seq.* exclusive federal regulation and pre-emption, along with restrictions on states require federal Court jurisdiction? and Whether federal Court jurisdiction is required due to U.S. Government's involvement in millions of *de-facto* and *entwined* GSE State-actor foreclosures and subject it to the property "takings" clause of the U.S. Constitution?

2. Whether "selling" and/or "pledging" millions of homeowners' property as collateral without consent and disclosure through RMBS securitization and rehypothecation of mortgage notes is unlawful, unconstitutional and violate NEMO DAT QUOD NON HABET? and Whether SEC securities laws prohibit this non-disclosure and collection of financial benefits not applied to and well in excess of mortgage note debt owed is unlawful and unconstitutional?

4. Whether numerous foreclosures violating UCC and some states law, including Florida HELOCs, must be vacated?

5. Whether Florida law allowing non-opinioned Per Curiam Affirmation (PCA) orders to remove review authority of the state High Court violates the guarantee of a fair legal process? and Whether all courts must file written opinions to satisfy Due Process?

PARTIES TO THE PROCEEDING

Petitioner, Garey Nehrke was defendant in the Circuit Court, and appellant in Florida Fourth District Court of Appeals.

Respondent, Wells Fargo Bank N.A. was sole plaintiff in trial Court and appellee on appeal. It is servicer for an unknown/secret party.

RULE 29.6 STATEMENT

None of the petitioners is a nongovernmental corporation, has a parent corporation or shares held by a publicly traded company.

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Garey Nehrke respectfully petitions for a Writ of Certiorari to review the order of Florida Fourth District Court of Appeals.

DECISIONS BELOW

The Florida Fourth District Court of Appeals non-opinioned denial of rehearing, certification and/or request for written opinion order (App. 1), its non-opinioned PCA order (App. 2), and Final Judgement of 17th Judicial Circuit Court for Broward County (App. 3) are attached hereto.

JURISDICTION

The non-opinioned order of Florida Fourth District Court of Appeals denying rehearing, certification and/or request for written opinion was entered on June 20th, 2019, so this petition is timely filed. This Court's jurisdiction rests on 28 U.S.C. § 1257(a), "the highest court of [the] State in which a decision could be had." *See, e.g., KPMG LLP v. Cocchi*, 565 U.S. 18, 19 (2011) (per curiam).

CONSTITUTIONAL, STATUATORY & RULING PROVISIONS INVOLVED

U.S. Const. amend. V, cl. 3 & 4, state: "...nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation." Accordingly, U.S. Const. amend. XIV, §1, cl. 2, provides in part: "nor shall any State deprive any person of life, liberty, or property, without due process of law."

U.S. Const. Article III, § 2, cl. 1: "The judicial Power shall extend to all Cases, in Law and Equity, arising

under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority...to Controversies to which the United States shall be a Party...". Concurring, 28 U.S.C. § 1345 states: "the district courts shall have original jurisdiction of all civil actions, suits or proceedings commenced by the United States, or by any agency or officer thereof expressly authorized to sue by Act of Congress." (June 25, 1948, ch. 646, 62 Stat. 933.).

U.S. Const. art. VI, cl. 2: "the Laws of the United States . . . shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

17 CFR § 240.10b-5 Employment of manipulative and deceptive devices.
It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails or of any facility of any national securities exchange, **(a)** To employ any device, scheme, or artifice to defraud, **(b)** To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or **(c)** To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person, in connection with the purchase or sale of any security. (Sec. 10; 48 Stat. 891; 15 U.S.C. 78j) [13 FR 8183, Dec. 22, 1948, as amended at 16 FR 7928, Aug. 11, 1951]

INTRODUCTION

It is no secret that Wells Fargo has defrauded millions of customers over the past decade or so, including countless homeowners that have been wrongfully removed from their homes by being dragged through the Foreclosure Crisis. To this day, Wells Fargo and others have not been truly held accountable to the millions of American homeowners they victimized through mass wrongful foreclosures. In fact, homeowners like the petitioner and his family for close to a decade have been wrongfully stonewalled within the Courts, and recent information received while communicating with current and former members of the DOJ has shed light on some kind of backdoor immunity deal. On the bright side, one member of this High Court, which has denied three previous petitions and reconsiderations thereof filed by the petitioner's family, was noted as showing angst in favor of numerous harmed homeowners. Unfortunately, though Wells Fargo who sat atop the mortgage business for much of the past decade has not been held accountable for the millions of atrocities it inflicted upon American homeowners. A recent federal appeals Court ruling has deemed the Net Worth Sweep (NWS) unconstitutional and previously held the FHFA to also be unconstitutional, in agreeance with the arguments herein and within the three previous petitions. The NWS has unlawfully syphoned Billions to the Treasury from the GSEs through millions of wrongful foreclosures by Wells Fargo and others. It is obvious record poverty and homelessness driven by the historical Foreclosure Crisis have created one of the greatest disconnects between wealth classes in history and has destroyed the American dream for millions of victims. It's time for Leadership to address the Foreclosure Crisis realities on millions of ignored and struggling American victims.

President Abraham Lincoln made it clear the job of leadership is to act in the best interest of the American people who truly control the government, by protecting them from those who encroach on their Constitutional Rights.[1] It is undeniable that the government was/is the ultimate financial beneficiary of millions of unlawful foreclosures by Wells Fargo and others.[2] It is the Constitutional purpose of this Court to step in and protect millions of Americans, many already victimized, by upholding their rights as citizens and holding the perpetrators like Wells Fargo accountable. This Court can clearly see herein and in previous petitions, that the lower Courts have failed to uphold the law and protect victims Constitutional Rights. In fact, Mr. Nehrke and his family have been continually harassed and abused by Wells Fargo since whistleblowing its numerous crimes. Recently Wells Fargo, Fannie Mae, Shapiro Fishman & Gache', All Homes Realty of Coral Springs FL and Amanda Cohen criminally trespassed, broke & entered, changed locks to lock the petitioners family out of their home, destroyed property and posted unlawful notices in violation of Fla. Stat. § 45.031(5),as they committed these acts only days after the unlawful sale and well before the ten days required. The Courts have failed to protect the *Pro Se* litigants (Mr. Nehrke and his family) by ignoring and/or making excuses for clear

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[1] "...The people — the people — are the rightful masters of both Congresses, and courts — not to overthrow the Constitution, but to overthrow the men who pervert it —". Abraham Lincoln, [Sept. 16-17, 1859] (Notes for Speech in Kansas and Ohio), Page 2.

[2] US Treasury, *"Amended and Restated Commitment to Purchase Financial Instrument and Servicer Participation Agreement"*, between Fannie Mae **(acting solely as financial agent of the United States)** and Wells Fargo, available at https://www.treasury.gov/initiatives/financial-stability/TARP-programs/housing/mha/Documents_Contracts_Agreements/wellsfargo-bankna_redacted.pdf

and obvious retaliatory acts, especially against a 77yr old veteran who has recently suffered multiple small strokes, has previously suffered three heart attacks and who is battling progressive Parkinson's disease. Not to mention the continued harassment and abuse on his daughter who is a disabled cancer survivor with a fragile immune system, who suffered an extremely rare broken pelvis from childbirth with debilitating effects and a recent heart attack directly attributable to the unlawful acts of Wells Fargo and foreclosure Judge Ledee, while she battled recent pneumonia. The unlawful retaliatory acts by Wells Fargo and its cohorts have continued unabated, as recent events have accelerated since Mr. Nehrke and his family contacted the DOJ and began working with current and former officials to address the issues at hand. During the weeks they frequented the Fort Lauderdale offices inside the federal building, Mr. Nehrke's grandchildren's health insurance was mysteriously alleged as cancelled two years ago when they have recently received ID cards and have paid claims from within the last year or so.[3] Additionally, during their communication with the DOJ, Wells Fargo placed an unauthorized stop payment on Mr. Nehrke's electric bill and then allowed FPL to take a duplicate unauthorized payment which has yet to be corrected.[4] Moreover, a few days later, Wells Fargo allowed Geico to take a rare two unauthorized payments,

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[3] This issue has not been fully resolved, as of last advisement one of his three grandchildren was still not reinstated. This act was similar to issues recently experienced by another known Wells Fargo whistleblower, and involved the same health insurer United Health.

[4] Wells Fargo continues to wrongfully accuse Mr. Nehrke and his daughter of requesting the unauthorized stop payment, but has reimbursed the fee. Neither Wells Fargo nor FPL has enlightened to who was wrongfully holding over four hundred dollars of Mr. Nehrke's money, as they both continue to blame each other.

which on last advisement was said to be the check is in the mail. Neither of these companies had the authority to auto debit Mr. Nehrke's account without his authorization, as he does not utilize auto payment with these companies. These acts were witnessed by the current and former officials of the DOJ, who also attempted to make phone calls to inquire and attempt to rectify these issues. Recently on August 21st, the foreclosure Court properly utilized the law and vacated Wells Fargo's unlawful foreclosure sale that it wrongfully orchestrated while under appeal.[5] That same day, Treasury sent a letter that it was going to garnish Mr. Nehrke's social security for alleged unpaid VA claims, questionable claims accusing Mr. Nehrke of utilizing the Miami VA for times he did not visit, in fact one of the alleged dates was December 23rd when Mr. Nehrke was in New York City for Christmas.[6] These issues just curiously arose at very convenient times, and clearly have validity, as you just can't make this stuff up. Furthermore, the Treasury was willing to so easily garnish his social security, when he has submitted multiple appeals over the years for the $77 per month benefit for his deceased

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[5] This hearing occurred because Wells Fargo set it without Mr. Nehrke's consent, after it vehemently denied his request for its intentions with the hearing be put in writing, and in fact its representative **tried to strongarm him by threatening that if he did not pick a date she would pick it for him, which she did.**

[6] Mr. Nehrke and his daughter requested all service information for the alleged dates provided, as they only made one trip to the Miami VA which was with the wrong doctor, and they paid his part of the visit. Recently, after an investigation was filed, the VA has advised that they are going to just remove the claims submitted to the treasury, **claims sent thereto without sending any previous statements and/or requests for payment to Mr. Nehrke.**

wife, who's wrongful death occurred on September 6th, 2015, some four years ago.[7]

Wells Fargo utilizes these unlawful acts with assistance from factions within the government to retaliate against whistleblowers and financially strain them so they cannot afford to continue to legally fight back. This is all to unlawfully conceal the facts that Wells Fargo and others defrauded millions of American homeowners through outright false misrepresentations with implementation of the government mandated HAMP modification program. A pattern of unlawful activity by Wells Fargo and others is clearly obvious, as other customers have shared eerily similar stories, including many having continual wrongful censorship issues with their social media accounts. These unconscionable frauds were part of a scheme whereas numerous default derivatives and secondary insurance bets taken against their customers interests were unlawfully triggered and benefits unjustly collected by way of forced defaults. These bets violated multiple federal laws, including TILA, RESPA and SEC Rule 10b-5, by unlawfully utilizing millions of Americans homes as collateral to "sell" and/or "pledge" their properties thru undisclosed, unconsented and unauthorized RMBS securitizations and rehypothecations, of which the benefits were NOT applied to the note balances as required by the contracts. These multiple unlawful "pledges" are also in direct violation of NEMO DAT QUOD NON HABET. Wells Fargo and some others utilized proprietary software patents with the wrongful intent to securitize and rehypothecate Americans homes before contracts were signed, homes they were not Legal Owners

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[7] These multiple appeals to social security have not been answered and rectified, **as it stands today Mr. Nehrke is owed close to four thousand dollars from social security for this benefit.**

of and unlawfully received the unjust benefits for. Wells Fargo and others misled millions of Americans, includeing Mr. Nehrke and his family, into believing the loans they were entering into were traditional mortgages, but as the facts show, that was far from the case. **These loans were undisclosed securities transactions for the direct benefit of Wells Fargo and others, including the government through its GSE financial agents, without full disclosure to and without the consent of millions of Americans to gamble their homes in the volatile securities markets.** (bold emphasis added). Millions of Americans, includeing Mr. Nehrke and his family, never gave consent to Wells Fargo and others, including the GSEs as financial agents for the government, to collect unlawful monetary benefits by wrongfully utilizing their homes, and of which were not applied to the note balances.

This Court can no longer ignore the numerous deliberate unlawful acts and injustices inflicted on mass Americans, many by Wells Fargo and the lower Courts. If found to be because of some wrongful backdoor immunity deal, which should have contained a standard stop breaking the law cause, Wells Fargo would have breached that clause countless times just with the petitioner and his family. Wells Fargo and others must be held accountable to millions of American victims and must pay restitution directly thereto. There are common sense No-Brainer plans discussed with the current and former DOJ officials that will rectify the Foreclosure Crisis and the governments involvement thereof through the GSEs, that will immediately spike economic activity to record levels, alleviate the unconstitutional violations upon GSE affected homeowners and shareholders, create jobs, reduce the decades-long

Wealth Gap by increasing personal wealth and disposable income among the masses by returning property unlawfully taken and increase tax revenue across the board to start paying down the massive deficit. All of these positives while the overhanging negatives are removed through proper restitution and minimal fallout from markets that will be met with Americans rebuilding their retirement nest eggs that were wrongfully reduced or lost because of the wrongful issues at hand.

It is undeniable that the conditions for some kind of wrongful backdoor immunity deal exists by looking at the numbers of homeowners who have actually prevailed in seeking justice compared to the overwhelming majority whose justice has been stonewalled. Especially when looking at the facts, the government has collected Billions in fines for all the unlawful acts against millions of homeowners and their properties, while they lie helpless with manifest injustices and no restitution. One of the settlements intended to help victimized homeowners was National Mortgage Settlement (NMS), which contrarily was utilized to further harms against victims. This is especially known in FL where the funds were used to close hundreds of cases per day per foreclosure judge utilizing unlawful proceedings void of Constitutional Rights of Due Process by lacking mandatory court reporters or recording devices, and was funded by the infamous *Rocket-Docket*.[8] Evenmoreso disturbing, is the reality the trial Courts benefitted from mass wrongful foreclosures, as in the midst of the Foreclosure Crisis, record homelessness

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[8] See, Alison Fitzgerald Kodjak of NPR, The Center for public Integrity, *"Homeowners Steamrolled as Florida Courts Clear Foreclosure Backlog"*, September 10, 2014, updated January 7, 2015, available at, https://publicintegrity.org/business/homeowners-steamrolled-as-florida-courts-clear-foreclosure-backlog/

and poverty, Broward County managed to build a NY like skyscraper Courthouse that trumps the iconic 110 Tower which over time has housed some of the who's who of elite legal professionals. The facts show the foreclosure Courts have financial incentives to foster mass wrongful foreclosures to the detriment of American victims. Their unlawful acts in assisting Wells Fargo in concealing its unlawful atrocities leaves little to no doubt to the intent of their actions, including herein and within litigations with Mr. Nehrke and his family.

These blatant violations of law can no longer be allowed to foster in a system of justice created by the U.S. Constitution, filled with officials that have taken oaths, some multiple, to protect the American people and uphold the law. Especially one with clear instructions to prevent manifest injustice and to work toward settlement of grievances. The distain that Americans and some legal professionals have for the justice system because of the past decade or so of stifling millions of victims' efforts to seek justice for their generations of wealth, memories and homes unlawfully taken from them is unconscionable. The basic foundation of the justice system has been marred by these millions of unlawful foreclosures and the obvious assistance of habitual wrongdoers like Wells Fargo, as witnessed by so many victims. This Supreme Court must reverse years of unfounded and unlawful excuses utilized to prevent victims from obtaining justice, so as to rebuild the public's trust in the people's judicial system.

Petitioner, his family and millions of victims pray on this Court to rectify these egregious issues of clear manifest injustice by upholding rights afforded unto millions of American victims within the U.S. Constitution. Especially when No-Brainer plans have been fostered

that would fix the issues with minimal fallout and the overwhelmingly positive benefits of such plans would reach every faction of the economy, including the government and wrongdoers like Wells Fargo. So clearly there is no reason not to implement these plans other than wrongfully allowing for continuation of the status quo of intentional violations of the Constitution and federal and state laws through mass frauds and wrongful concealment. Promote justice not malfeasance.

STATEMENT OF THE CASE

The foreclosure herein was wrongfully brought by Wells Fargo in violation of multiple federal and FL laws, including the UCC. Wells Fargo brought this action in deliberate defiance of Fla. Stat. § 673.1041(1) (2012), prohibiting it from foreclosing on a HELOC as a non-negotiable instrument. Wells Fargo and its cohorts committed multiple acts of Fraud on the Court, initiated wrongful acts of retaliation against Mr. Nehrke and his family as whistleblowers, and furthered its scheme to defraud millions of unsuspecting homeowners of their homes. With clear wrongful assistance from Courts, Wells Fargo was allowed to unlawfully bring this action, receive a wrongful void judgement and conceal its crimes, including by way of mysterious "lost" transcripts. Wells Fargo was the only party in possession and wrongfully tried to get the appeal to the 4th DCA thrown out. The fact that the 4th DCA ignored the lost transcripts issue which was clearly a botched attempt by Wells Fargo and the Broward clerk is unconscionable, as the clerk originally advised that it had prepared and forwarded the transcripts and accepted payment for close to five hundred dollars for doing so.[9]

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[9] Mr. Nehrke has still not received a refund from the Broward Clerk for services it did not render and received payment for.

Meanwhile, after Mr. Nehrke uncovered the botched transcript attempt and filed it within the Court, Wells Fargo's ex-CEO Tim Sloan abruptly resigned the next day after receiving 100% support of the Board of Directors and its largest shareholder Warren Buffett only hours prior. Within the next few days, the elite attorney responsible for Wells Fargo's appeal, was no longer with the firm. This assistance and concealment of mass fraud on the Courts and millions of Americans must end, as violating Due Process rights and having property "taken", financially benefiting the government through the NWS, which has recently been deemed unconstitutional, is unconscionable.

Wells Fargo has also dredged up painful memories of Mr. Nehrke's wife's wrongful death, as it falsely claimed that in 2018 Mrs. Nehrke, deceased since 2015, rose form the dead and requested a modification package. Mrs. Nehrke's sudden death was brought on by Wells Fargo's years of relentless harassment and abuse of her family. To make matters worse, Wells Fargo filed a second foreclosure action on June 1st, 2018, Mr. Nehrke's and his deceased wife's 50th Anniversary, and conveniently held service of such documents for over a month, until Saturday July 7th, his only daughter' s birthday. Curiously, the Broward Court felt it necessary for two years in a row to deliberately ruin Mr. Nehrke's family's Independence Day holidays, as it conveniently set the trials for both foreclosure actions on July 3rd, 2018 & then the second in 2019. Again, you just can't make this stuff up.

Wells Fargo's alleged credible witness was nothing of the sort at trial, she struggled when asked pertinent questions as to the securitization, rehypothecation, and

chain of title, including the paper trail of the note and mortgage if Wells Fargo was acting as servicer as she advised. Wells Fargo's counsel immediately shouted to the Court that Wells Fargo was the holder, deliberately violating the UCC and Florida law. It was no wonder Wells Fargo attempted to lose the transcripts, they were completely damning to it and the subsequent concealment of its unlawful foreclosure judgement.

The facts of law show that Wells Fargo never had standing to bring this action and its second unlawful foreclosure, as **it was never a "designated holder" of the note and mortgage under the UCC or Florida law.** This is because it is well settled that **as servicer Wells Fargo could never be an Article 3 holder, as it is acting solely as servicing agent, the principal is always considered to be the holder under the UCC.** Florida law concurs, as **Wells Fargo could only be a holder by way of negotiation, which requires the transfer of the entire bundle of rights in the instrument,** which never occurred and Wells Fargo failed to allege. (bold emphasis added). Wells Fargo also failed to supply a complete chain of title outlining the history of multiple transfers herein, especially all unlawful securitizations and rehypothecation pledges. There are obvious questions as to the validity of Wells Fargo's alleged note and mortgage being original wet seal documents which are required to substantiate ownership and to receive a final judgement under FL law. Since Wells Fargo is the servicer, how come there are no other endorsements on the note to effectuate a transfer from Wells Fargo to the real party in interest? How come Wells Fargo to this day has failed to disclose the true debt owner who must prove that as the real party in interest it paid value for the

debt? Under the federal and FL rules set forth for foreclosures, Wells Fargo has failed to satisfy any of the rules to justify its standing in these proceedings and the unlawful judgement herein which is *void ab intio.*

Within its second wrongful foreclosure action, Wells Fargo had the audacity to claim that Mr. Nehrke was causing delays and harassing it. In reality, this was a deliberate fallacious attack which constitutes further Fraud on the Court, as Mr. Nehrke clearly filed his filings on time while Wells Fargo needed 4 months of extensions herein to file its brief and therein its second wrongful foreclosure waited some 5 months before filing an untimely answer to Mr. Nehrke's affirmative defenses. Albeit, its response was concealed as a motion in support of foreclosure, but in reality is an untimely answer which was allowed by Judge Ledee who's ruling made no sense, as he advised if he ruled in Mr. Nehrke's favor on his motion to strike Wells Fargo's grossly late answer, he wouldn't be able to utilize his affirmative defenses at trial.[10] What? Still can't make this stuff up.

More disturbing was the recent events that unfolded at the foreclosure Court before the second unlawful foreclosure trial. Wells Fargo took the harassment to another level, by falsely accusing Mr. Nehrke of threatening and intimidating people in the Broward Foreclosure Court. These accusations are completely baseless, Mr. Nehrke is an elderly veteran who has suffered 3 previous heart attacks, has skin cancer and has bad shakes from progressive Parkinson's disease, not the picture of intimidation. He along with his daughter and an attorney friend were harassed, physically pushed aside and threatened with handcuffs while court officers led Mr. Nehrke down the hall to talk. Wells Fargo

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[10] *Wells Fargo v. Nehrke,* , 17th Circ. CACE18015052.

also objected to Mrs. Barone assisting him, when she was allowed in all previous hearings and trials. This was a blatant act to further harass Mr. Nehrke and his family, that must be rectified by this Court. The wrongful assistance in concealing Wells Fargo's wrongdoings is getting very sloppy and blatantly obvious. In fact, every unlawful act by Wells Fargo and its cohorts that involve the GSEs and the government puts the taxpayers at further RISK to bear the burden.

Wells Fargo utilized its government mandated HAMP modification fraud against Mr. Nehrke, and it used Dual-tracking by bringing foreclosure while modification packages were under review. Mr. Nehrke and his deceased wife were wrongfully advised to stop making payments, as they needed to be behind to qualify for HAMP. This false misrepresentation was utilized by Wells Fargo and others to force unsuspecting homeowners into default so that it could collect on all the bets it made against its customers best interests. This scheme was publicly outed by ex-S.I.G. TARP, Neil Barofsky, in his book BAILOUT, Chapter 8, Foaming the Runway.[11] Treasury Making Home Affordable Reports showed

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[11] - *"One particularly pernicious type of abuse was that servicers would direct borrowers who were current on their mortgages to start skipping payments, telling them that they would allow them to qualify for a HAMP modification. The servicers thereby racked up more late fees, and meanwhile many of the borrowers might have been entitled to participate in HAMP even if they had never missed a payment. Those led to some of the most heartbreaking cases. Homeowners who might have been able to ride out the crisis instead ended up in long trial modifications, after which the servicers would deny them a permanent modification and then send them an enormous "deficiency" bill."* (emphasis added). - *See* also *Kuehlman v. Bank of America*, 177 So3d 1282 (Fla.5th DCA 2015); *Nowlin v. Nationstar Mortg.*, LLC, 193 So.3d 1043 (2016).

Wells Fargo was only complying with its legal obligetions under HAMP less than 10% of the time, denying HAMP modifications in order to seek "lucrative fees on delinquent loans", it only provided 9,761 HAMP trial modifications out of the 110,807 required. Wells Fargo would Bait & Switch customers into a secondary mod that clearly benefitted it and its "Investor" instead of a HAMP modification that was substantially more beneficial to the customers. Wells Fargo continues to conceal the identity of the investor herein, and utilized fraudulent forced Lender Placed Insurance (LPI). Wells Fargo wrongfully forced unsuspecting customers to pay for its forced LPI policies to qualify for the trial payments, while it was receiving secret "kickbacks" and/or incentives. [12] Wells Fargo was ordered by the Court to get Mr. Nehrke a claim number for its alleged "glitch" that supposedly allowed them to wrongfully foreclose on numerous customers, but it failed to abide. Wells Fargo manipulated LPI premiums with backdoor deals with insurers that led to its extensive control over LPI policies it placed on its customers, within their fiduciary protected escrow accounts. Wells Fargo furthered its unlawful foreclosure schemes by utilizing a 150 page foreclosure handbook outlining how to produce fraudulent documents utilized to commit mass fraud.

Within its unlawful modification and foreclosure fraud against Mr. Nehrke and his deceased wife, Wells Fargo attempted to coerce them into submitting a statement blaming his daughter and son-in-law for their financial situation to allegedly assist in modification approval. Moreover, while Mr. Nehrke's wife was on hospice dying in August 2015, Wells Fargo wrongfully co-

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[12] ***See*** *Simpkins v Wells Fargo Bank, N.A.*, 2013 WL 4510166, at *7 (S.D. Ill. Aug 26, 2013)

erced a family friend, a highly respected community figure, to not do a business deal with Mr. Barone by defaming the Barone's and threatening his ongoing commercial projects. This quashed the deal and irreparably damaged a 50+ year friendship. These acts are unacceptable and unlawful, and this Court must rectify.

Back a few years ago Fox News concealed a Broward foreclosure Court story after a local producer substantiated the wrongdoings by visiting the courtroom. Last year a Sun-Sentinel reporter worked on Mr. Nehrke's and his family's story, confirmed the unlawful foreclosure sale that occurred while on appeal, only to have it pulled at the last minute by the editors. Most recently, while Mr. Nehrke and his family have been working with the current and former officials of the DOJ, Fox's local South FL affiliate WSVN, was given a chance to make right on its previous failure to expose Wells Fargo's and the Broward Court's unlawful acts. The investigative reporter and her cameraman came to Mr. Nehrke's and his family's homes and recorded hours of interviews only to have the plug pulled by executives when it was ready to air. The ridiculous excuse utilized by elite executives was that they did not understand foreclosures. Problem is they directed the reporter, who had been at Mr. Nehrke's home only hours prior and was returning shortly, to not return to their home and to not contact them any further. Why would they give this direction if they just weren't going to air the story? Why would they give direction that is normally utilized when someone is threatened not to do something?

REASONS FOR GRANTING THE WRIT

The vital questions raised affect all Americans whether directly as victims or indirectly as taxpayers and must be addressed, as these void judgements can

and will be attacked until rule of law prevails. The fate of future generations hangs on the steadfastness to correct these Constitutional violations against Mr. Nehrke, his family and millions of others. Rule of law directs that void judgements are a nullity and have no standing, and no Court or judge can make valid that which is not. The injustices plaguing the Courts in favor of corporate and political interests must end. It's time for Constitutional rights of due process, fairness and justice to prevail as it was meant to be when created by our founding fathers.

The U.S. Government is undeniably utilizing the GSEs as State-actor financial agents, and is syphoning Billions of unlawful monies from these companies which is coming from countless wrongful foreclosures on Americans homes. With the recent federal Court ruling that the NWS is unconstitutional, and the previous ruling deeming the FHFA unconstitutional, this High Court must step in and set the rightful precedent that is needed to correct over a decade of wrongful foreclosures. This is clearly a Constitutional issue which demands exclusive federal jurisdiction and the addressment of this Supreme Court. Wells Fargo has committed unconscionable acts against millions of Americans in furtherance of these unlawful foreclosures, many that the government has an undeniable financial interest in. These are far reaching issues of great public importance which affect the lives of all Americans. These issues can no longer be ignored and/or stonewalled in the Courts, as the largest heist of American property and wealth in our Country's history must be rectified. State records divisions contain a plethora of corrupted land titles while secret securitizations, rehypothecations, default policies and multiple derivative hedges have allowed Wells Fargo and others to gain unjust monies from mass foreclosure fraud. These unlawful

and undisclosed securities transactions were misrepresented to unsuspecting victims as traditional mortgages. Furthermore, the government has collected Billions in fines for numerous frauds that substantiates the need for homeowner restitution, as unlawful benefits well above the note balances owed were syphoned from each property by non-legal owners like Wells Fargo. These questions are ripe for review and addressing by the Court to set rightful Constitutional precedent.

I. This Court Should Grant Certiorari To Address The Jurisdiction of Wells Fargo and National Banks, and the GSEs Acting Solely as Financial Agents of the United States

Under the National Bank Act, 12 U.S.C. 1 *et seq.*, the states are prohibited from interfering in the daily operations of national banks like Wells Fargo. Wells Fargo enjoys the benefits of a federal charter which allows it exclusive federal pre-emption and regulation, essentially removing the states from any authority to affect its daily business. It is not a coincidence that Wells Fargo and other national banks chose to orchestrate their unlawful schemes to defraud millions of homeowners in the state Courts. The states along with their appendage Courts have no authority over Wells Fargo, so it is unclear under the provisions set forth in the NBA, how any decision by a state Court does not directly affect its daily business and violate the NBA. This Court held in *Watters v. Wachovia Bank, N. A.*, No. 05-1342, 550 U.S. 1 (2007), that under 12 U.S.C. § 484(a), state authorities are generally prohibited from exercising visitorial powers over national banks. In other words, "[s]tate officials may not exercise visitorial powers with respect to national banks."

12 C.F.R. 7.4000(a). Under 12 C.F.R. 7.4000(a)(2)(i)-(iv):
"Visitorial powers" encompass "[e]xamination of a [national] bank," "[i]nspection of a bank's books and records," "[r]egu lation and supervision of activities authorized or permitted pursuant to federal banking law," and "[e]nforcing compliance with any applicable federal or state laws concerning those activities." *See* also *Farmers' & Mechanics Nat'l Bank v. Dearing*, 91 U.S. 29, 34 (1875). This direction by this High Court does not leave room for any other interpretation, states includeing their appendage Courts have no authority over Wells Fargo and national banks, which are federally chartered and regulated, demanding exclusive federal jurisdiction. Subjecting them to the law, which demands federal jurisdiction, alone would deter the unlawful acts by Wells Fargo and other national banks.

As previously noted herein Pg. 4, Fn. 3, Fannie Mae within Treasury agreements with Wells Fargo is acting solely as financial agent of the United States. This concurs with the previous petitions submitted to this Court and with a district Court ruling correctly following this Court's State-actor direction set in *Lebron v. National Railroad Passenger Corp.*, 513 U.S. 374, 115 S. Ct. 961, 130 L. Ed. 2d 902 (1995), and clarified in *Dept. of Trans. v. Assoc. of American Railroads,* 135 S. Ct. 1225, 191 L. Ed. 2d 153 (2015), where it directed Courts to not just rely on Congressional labels, but to assess the "practical reality" of an entity's operating status *in fact. See Sisti v. Federal Housing Finance Agency*, 2018 WL 3655578 (D.R.I. Aug. 2, 2018). This decision substantiates the arguments herein and within previous petitions. Additionally, the arguments are substantiated by

the government asserting the authority to sue on the GSEs behalf.[13]

It is undeniable that Federal jurisdiction of the government's interests lies within Article III § 2 Cl. 1 of the Constitution and 28 U.S.C. § 1345. This Court set precedent in *United States v. Texas,* 143 U.S. 621 (1892) the federal judicial power exclusive to the Supreme Court included *"cases in which the United States was a party,"* (emphasis added). The GSEs are acting in the sole interest and financial benefit of the government, which warrants federal jurisdiction of millions of Americans foreclosures wrongfully brought by Wells Fargo and others in improper state venues, rendering the judgements *void ab initio.*

Additionally, this Court's "entwinement test" u*nder Brentwood Academy v. Tennessee Secondary School Athletic Ass'n,* 531 U.S. 288, 297, 121 S.Ct. 924, 148 L.Ed.2d 807 (2001), holds the GSEs as *de-facto* State-actors, as their actions are clearly entangled with State-action. This test addresses instances in which the government assists and/or a State-actor "affirmatively authorizes, encourages, or facilitates private conduct that violates the Constitution."[14] Furthermore, in *Hollingsworth v. Perry,* 133 S. Ct. 2652, 186 L. Ed. 2d 768, 2013 U.S. LEXIS 4919 (2013), this Court outlined the agency test which is substantiated by the aforementioned Treasury agreements because the government is the sole beneficiary with right of Total Control over the GSEs operations and finances. ***("An essential element of agency is the principal's right to control***

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[13] See *United States of Amer. Ex. Rel. Peter D. Grubea v. Rosicki, Rosicki & Assoc., P.C., et al.,* No. 1:12-cv-07199 (S.DN.Y. 2012).

[14] See *Erwin Chemerinsky,* Constitutional Law: Principles and Policies, at 539 (4th ed. 2011).

the agent's actions." (bold emphasis added).[15] Under these holdings the GSEs are *de-facto* State-actors subjecting them to federal jurisdiction and solidifies that millions of unlawful foreclosures are vital issues, as it is well settled that an American's Constitutional ("right to maintain control over his home . . . is a private interest of historic and continuing importance"). *United States v. James Daniel Good Real Prop.*, 510 U.S. 43, 53–54, 114 S. Ct. 492, 126 L. Ed. 2d 490 (1993)..[16] Accordingly, this Court has long held that the federal Court shall decide arguments over how to interpret the Constitution and federal law. (*See Marbury v. Madison*, 5 U.S. 137 (1803)).

II. This Court Should Grant Certiorari To Address the Vital Issues of Undisclosed Derivatives, Securitization & Rehypothecation Violating NEMO DAT QUOD NON HABET, SEC Securities Laws and the Loan Contracts

The secondary Residential Mortgage Backed Securities (RMBS) market contributed to the collapse of the housing market. The government was well aware of this and created an RMBS task force to conduct investigations inside banks like Wells Fargo to assist victims in achieving justice.[17] Unfortunately, this task force did not live up to its purpose upon creation and has led to countless victims saddled with unconstitutional manifest injustices. Mr. Nehrke and his family, along with Back a few years ago Fox News concealed a Broward

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[15] *See* RESTATEMENT (THIRD) OF AGENCY § 1.01 cmt. f (1)(2006).

[16] *See* Brian Taylor Goldman, "The Indefinite Conservatorship of Fannie Mae and Freddie Mac is State-Action", 17 J. Bus. & Sec. L. 11 (2017), Michigan State Univ. College of law, *Available at* http://digitalcommons.law.msu.edu/jbsl/vol17/iss1/1

[17] https://www.justice.gov/sites/default/files/ag/legacy/2012/01/27/residential-mortgage-backed-securities.pdf

millions of other Americans were misled and deceived into believing they were entering into traditional mortgage contracts, when in fact they were **undisclosed securities transactions** in violation of Securities and Exchange Commission (SEC) Rule 10b-5 targeting securities fraud authorized under § 10(b) of the Securities Exchange Act of 1934, and codified at 17 C.F.R § 240. 10b-5 *Employment of manipulative and deceptive devices.* This Act was adopted to provide more transparency in secondary securities markets, similar to the current RMBS markets, in response to the stock market crash of 1929. Wells Fargo clearly violated this rule by *employing a scheme to defraud* Mr. Nehrke, his family and countless others by way of false misrepresentation of the loan contracts, by ***making untrue statements or omitting material facts*** and by ***engaging in any act, practice or course of business which operates as a fraud or deceit.*** (bold emphasis added). As part of this securities fraud, Wells Fargo securitized and rehypothecated the loan herein multiple times collecting unjust benefits by selling and/or pledging the property it did not possess or have a right to in violation of **NEMO DAT QUOD NON HABET (*"no one gives what they don't have"*).** It accomplished this through packaged RMBS securities and trading with third parties in the open market. Wells Fargo failed to disclose all of these secret secondary market securities transactions, including numerous securitizations, rehypothecations, secondary default insurances and derivative transactions, all of which were not authorized by Mr. Nehrke, his family, millions of other customers or by the contracts, creating multiple breaches. These numerous breaches were part of a calculated scheme to defraud the Court and the aforementioned parties of their homes, violating their Constitutional Rights and essentially voids the contracts. Petitioner and millions

of Americans did NOT give Wells Fargo and others the authority to sell, pledge or gamble their properties in the securities markets. These securities transactions were not disclosed and the proceeds collected utilizing the properties were not applied to the note balances as required by the contracts. Wells Fargo also utilized secret default policies, including fraudulent FHA policies, CDS, CDOs, and similar derivatives to profiteer from foreclosures, giving it an incentive to push its customers into default and drag it out to make it next to impossible to cure. With these secret benefits Wells Fargo collected sums far in excess of the legal debt owed while not crediting the ill-gotten gains to the debt balances.

Another vital issue with the unlawful securitizations and rehypothecations is that the GSEs uniform note does not fit the definition of a negotiable instrument prohibiting it from being traded between parties. *See* Ice, Thomas Erskine, *Negotiating the American Dream: A Critical Look at the Role of Negotiability in the Foreclosure Crisis*, The Florida Bar, Vol. 86, No. 10 (December 2012), at pg. 8.[18] These actions and omissions are clearly in violation of Rule 10b-5.

III. This Court Should Grant Certiorari To Address Servicer Standing Under the UCC and Florida Law and to Address the Importance of the Real Party In Interest in Foreclosures

Wells Fargo falsely presented itself to the Court as an actual holder "designated holder" with authorization to pursue this action under Article 3 of the UCC. Wells Fargo's purported standing as an Article 3 holder as

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[18] (pointing out that the form Fannie Mae/Freddie Mac Uniform Instrument Note does not meet the definition of a negotiable instrument and was never intended to)

servicer for an undisclosed/secret party fails, as a servicer can never be an article 3 holder. As servicer under Article 3 of the UCC, Wells Fargo is not a "holder" of the note because the **UCC considers the principal to be the holder when an agent is in possession of the principal's property**. See *In re Phillips*, 491 B.R. 255, 263 (Bankr. D. Nev. 2013) ("Thus, a person is a **"holder"** of a negotiable instrument **when it is in the physical possession of his or her agent.**"). (bold em phasis added). See also, *Bankers Trust (Delaware) v. 236 Beltway Inv.*, 865 F. Supp. 1186, 1195 (E.D. Va. 1994) (**the UCC "sensibly recognizes that a party has constructive possession of a negotiable in strument when it is held by the party's agent..."** [internal citations omitted])(bold emphasis added). Ad ditionally, under § 673.2011, Fla. Stat. Ann., ("Negoti ation always requires a change in possession of the in strument because **nobody can be a holder without possessing the instrument, either directly or through an agent.)** (bold emphasis added). Moreover, under § 673.2031(4), Fla. Stat. **("If a transferor pur ports to transfer less than the entire instrument, negotiation of the instrument does not occur.")** and a party can only become an Article 3 holder by way of "negotiation"—**which involves a transfer of the entire bundle of rights in the instrument.** § 673.2011, Fla. Stat. (defining negotiation)(bold empha sis added). Wells Fargo may purport that a secret party gave it possession of the note for the purpose of enforce ing, but **this is NOT a negotiation under Florida law** and was never intended to be. (emphasis added). Adherence to Statutes is imperative, as "the Legislature does not intend to enact useless provisions, and courts should avoid readings that would render part of a statute meaningless." *Borden v. East-European Ins. Co.*, 921 So. 2d 587, 595 (Fla. 2006) (citing *State v.*

Goode, 830 So. 2d 817, 824 (Fla. 2002)). In a situation where one of the GSEs may be the undisclosed party, Fannie Mae Servicing Guide, Part I, Chapter 2, Section 202.06, Note Holder Status for Legal Proceedings Conducted in the Servicer's Name, advises **"Fannie Mae is at all times the owner of the mortgage note, whether the note is in Fannie Mae's portfolio or whether owned as trustee..."**,[19] therefore there could never be any negotiation of the entire bundle of rights as required by law, so Wells Fargo could never became a holder or real party in interest and would fail to satisfy standing. See *Balch v. LaSalle Bank, N.A.*, 171 So. 3d 207, 209 (FLA. 4th DCA 2015) "evidence that the note was transferred into the trust prior to the foreclosure action is insufficient by itself to confer standing because **there was no evidence that the indorsee had the intent to transfer any interest to the trustee.**" (bold emphasis added). Accordingly, Wells Fargo cannot be considered a holder under the UCC and FL law in its capacity as servicer, depriving it of standing and rendering this action and judgement *void ab initio,* regardless if it possessed a properly endorsed note.

Although Wells Fargo claimed it was the holder of the note for some secret party who gave it authorization to bring this action, it failed to satisfy conditions under FL law as its conclusory presumptions were never substantiated with evidentiary documentation specifically ratifying its actions herein. The 4th DCA set the precedent in *Elston/Leetsdale, LLC v. CWCapital Asset Mgmt. LLC*, 87 So. 3d 14 (Fla. 4th DCA 2012), where it made it clear that a servicer may only be considered as a party to a foreclosure action if (1) its principal/real party in interest has joined in or (2) ratified its conduct

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[19] Servicing Guide, Part I, Chapter 2, Section 202.06, Note Holder Status for Legal Proceedings Conducted in the Servicer's Name.

by authorizing its bringing of the action. Herein, Wells Fargo failed to join the real party in interest as a named party, in fact it never disclosed this secret party's identity, nor did Wells Fargo submit any substantive evidence to prove the real party in interest ratified/authorized this action. Therefore, Wells Fargo was never a real party in interest at the time this case was filed nor at the time of judgement. *Elston/Leetsdale* outlined that the real party in interest must be joined as a party unless the relationship between real party in interest and plaintiff fits into one of these six categories: 1) a personal representative; 2) an administrator; 3) a guardian; 4) a trustee of an express trust; 5) a party with whom or in whose name a contract has been made for the benefit of another; or 6) a party expressly authorized by statute to sue in that party's own name without joining the party for whose benefit the action is brought. Fla. R. Civ. P. Rule 1.210(a). Accordingly, Wells Fargo's relationship with the real party in interest as a secret party cannot fit one of these six categories, and as such under *Elston/Leetsdale* it was required to join the real party in interest, which it failed to do, depriving it of standing to bring this action. The rule expressly lists the types of agents that may sue in their own name without joining the real party in interest which implies the exclusion of other relationships. See *Biddle v. State Beverage Dept.*, 187 So. 2d 65, 67 (Fla. 4th DCA 1966) (applying '[e]xpressio unius est exclusio alterius'—**the mention of one thing implies the exclusion of another**)(bold emphasis added).

Although Fla. R. Civ. P. Rule 1.210(a) does not expressly mention ratification the district Courts have decided to follow the 3rd DCA in *Kumar Corp. v. Nopal Lines, Ltd.*, 462 So. 2d at 1185 (affidavits unequivocally show that principal ratified and endorsed agent's action

in bringing suit on principal's behalf). Accordingly, Wells Fargo also failed to satisfy this second vital option to prove standing, as it never produced any substantive evidence in the form of affidavits from the real party in interest expressly authorizing it bringing this specific foreclosure action against Mr. Nehrke. Since it is mandatory that a party must acquire standing before filing suit, Wells Fargo's hoodwinking of the Court at the onset with its purported standing, legal conclusions and wrongful presumptions of facts renders these proceedings *void ab initio*. See *Boyd v. Wells Fargo Bank, N.A.*, 143 So. 3d 1128 (Fla. 4th DCA 2014) (reversing summary judgment of foreclosure because **foreclosing lender failed to produce documentation establishing that it had standing at the time it filed the foreclosure complaint**). (bold emphasis added).

Wells Fargo's claims as agent also fail, because such an allegation without allegations necessary to establish an agency relationship, is therefore a mere legal conclusion that the Court should not have taken as true. *See Loan Co. v. Smith*, 155 So. 2d 711 (Fla. 1st DCA 1963) (**holding that mere legal conclusions are fatally defective unless substantiated by sufficient allegations of ultimate fact**); *Phelps v. Gilbreth*, 68 So. 2d 360 (Fla. 1953) (**holding that allegations of legal conclusions are of no legal effect or significance and are generally ignored in the construction and consideration of the pleadings of which they are a part**). (bold emphasis added). By not providing any endorsement, assignment and/or affidavit attached to the note from the real party in interest transferring all rights thereto to satisfy negotiation and to satisfy ratification under FL law, Wells Fargo was deprived of standing to bring this action.

Additionally, Wells Fargo cannot claim to be act-ing as servicer for the note and owner of the mortgage, as it is well established law that the mortgage follows the note, but the note never follows the mortgage, so Wells Fargo could not have owned the mortgage and had standing to foreclose while a secret party owns the note. See *Carpenter v. Longan*, 83 U.S. 271 (1872) **"the note and mortgage are inseparable; the former as essential, the latter as an incident. An assignment of the note carries the mortgage with it, while an assignment of the mortgage alone is a nullity."** (bold emphasis added) and *Lizio v. McCullom*, 36 So. 3d 927, 929 (Fla. 4th DCA 2010) **"The party seeking foreclosure must present evidence that it owns and holds the note and mortgage in question in order to proceed with a foreclosure action."** (bold emphasis added). Wells Fargo failed to satisfy standing under *Lizio*, and its allegations clearly create a genuine issue of material fact as to whether it owned and held the note and mortgage under federal and FL law, thus depriving it of standing to foreclose. *See Verizzo v. Bank of New York*, 28 So. 3d 976, 978 (Fla. 2d DCA 2010) (providing that **"there is a genuine issue of material fact as to whether the Bank of New York owns and holds the note and has standing to foreclose the mortgage.")** (bold emphasis added). And when doubt exists, ("It is well settled that a plaintiff in a foreclosure case **must demonstrate that it had standing at the time the complaint was filed.**") *McClean v. JPMorgan Chase Bank Nat'l Ass'n*, 79 So. 3d 170, 173 (Fla. 4th DCA 2012). (bold emphasis added). Accordingly, **"Where the defendant denies that the party seeking foreclosure has an ownership interest in the mortgage, the issue of ownership becomes an issue the plaintiff must prove."** See *Lizio*; *Carapezza v. Pate*, 143 So. 2d

346, 347 (Fla. 3d DCA 1962). (bold emphasis added). Taking Wells Fargo's allegations at face value directs, as the only named Plaintiff, that it owns the mortgage separating it from the note that it services for a secret party owner in direct violation of this Court's long-held direction in *Longan* rendering the instruments as nullities and this action and judgement as *void ab initio.* This Court's holding concurs with the use of Mortgage Electronic Registration Systems (MERS) herein, as it is well known the mortgage and note were immediately separated and in fact most likely the original "wet seal documents" were destroyed upon electronic scanning and transfer.

Furthermore, this Court set precedent for third-party actions in *Valley Forge Christian Coll. v. Americans United for Separation of Church & State, Inc.*, 454 U.S. 464, 474 (1982).[20] The Florida Supreme Court holding in *Smith v. Kleiser*, 91 Fla. 84 (Fla. 1926) concurs, (*"In a suit to foreclose a mortgage...it should be in the name of the real owner of the debt secured."*) (emphasis added). The *Real-Party-In-Interest* Doctrine and Fed. R. Civ. P 17 also concur, (*"An action must be prosecuted in the name of the real party in interest."*) (emphasis added). Moreover, Rule 19 requires parties to a suit when the Court cannot accord complete relief among existing parties. This concurs with the aforementioned FL law requiring joinder. Wells Fargo is not the true debt owner and cannot legally surrender any of the true note owner's rights.

Additionally, Wells Fargo violated Florida Statute § 673.1041(1) (2012), a HELOC, as Mr. Nehrke's herein,

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[20] (*"real party in interest must assert its own legal rights and interests, and cannot rest his claim to relief on the legal rights or interests of third parties."*)(emphasis added).

is considered **non-negotiable and is not a self-authenticating negotiable instrument**, it is a "credit limit" and **not an unconditional promise to pay a fixed amount of money**. Accordingly, *a negotiable instrument is an unconditional promise or order to pay a fixed amount of money, with or without interest or other charges described in the promise or order."* § 673.1041(1), Fla. Stat. (2012) (emphasis added). The Florida 2nd DCA considered this in *Third Federal Savings & Loan Association of Cleveland v. Koulouvaris,* Case No. 2D17-773 (Fla. 2nd DCA May 18, 2018) and held ("The HELOC note failed to require the payment of a fixed amount of money, making it a nonnegotiable instrument"). Accordingly, the HELOC establishes a "credit limit" from which Mr. Nehrke could "request an advance at any time.", which would "reduce your available credit." (The HELOC note was not an unconditional promise to pay a fixed amount of money. Rather, it established "[t]he maximum amount of borrowing power extended to a borrower by a given lender, to be drawn upon by the borrower as needed." See *Line of Credit,* Black's Law Dictionary, 949 (8th ed. 1999)). (This distinction is not esoteric legalese. Florida law is clear that a "negotiable instrument" is "an unconditional promise or order to pay a fixed amount of money, with or without interest or other charges described in the promise or order." § 673.1041(1), Fla. Stat. (2012) (emphasis added). The HELOC note reflects no such undertaking. It only obligates the Koulouvarises to repay whatever they borrow, up to $40,000.). The Court concluded (The HELOC note failed to require the payment of a fixed amount of money, making it a nonegotiable instrument. As such, it was not self-authenticating. Thus, absent other proof of authentication, it was inadmissible into evidence.). Wells Fargo did not provide any proof of authentication prior to Mr. Nehrke's

non-negotiable HELOC instrument being admitted into evidence, in fact, Wells Fargo came late to the game with a treasure trove of "lost" document claims, which cannot legally be presumed as original "unaltered" documents, especially with its 150 page foreclosure fraud manual in play. Furthermore, the 2nd DCA concluded that in similar circumstances as faced herein it was proper for the trial Court to involuntarily dismiss the case, of which the Court herein should have obliged.

The Florida 5th DCA also reached the same conclusion as the 2nd in *Koulouvaris,* in *Chuchian v. Situs Invs., LLC*, 219 So.3d 992, 993 (Fla. 5th DCA 2017), in which it agreed that a ("credit agreement . . . was a nonnegotiable instrument because it was not for a fixed sum."). This principle is clear and obvious within Florida law rendering its precedent as axiomatic. The HELOC issues faced herein have been addressed by legal professionals and alike who's conclusions agree with the aforementioned directions.[21]

IV. This Court Should Grant Certiorari To Address Florida Law That Infringes On Constitutional Due Process with Non-Opinioned PCA Decisions that Remove the Review Authority Of The Highest State Court

No Court should be allowed to rule without citation to substantiate its holdings if properly rendered by the

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[21] See Peterson, David E., *Cracking the Mortgage Assignment Shell Game*, The Florida Bar Journal, Vol. 85, No. 9 (November 2011) at pg. 10, fn. 32 (Home Equity Lines of Credit are not negotiable and not covered under Article 3 of the UCC); Renuart, Elizabeth, *Uneasy Intersections: the Right to Foreclose and the U.C.C.*, 48 Wake Forest Law Review 1205, at pg. 1228-29 and cases cited therein (a HELOC note is not negotiable because it does not contain a provision requiring payment of a fixed amount of money).

law, especially a state Court reviewing Constitutional issues that have far reaching implications into the public domain and federal Court jurisdiction. A non-opinioned order can in no way satisfy the Constitutional guarantee of a fair legal process, nor can it satisfy the common law doctrine of fair procedure. Herein, the trial court and 4th DCA never cited any case law to back up their decisions, which as outlined herein with numerous facts of law to contradict, are obviously flawed. Non-opinioned orders in FL have irritated litigants and attorneys to the point that one put together the data.[22] It's time for the justice system to implement changes of unconstitutional non-opinioned orders, that require all Courts to supply written opinions utilizing substantive law to satisfy the Constitutional Rights of Fair Legal proceedings and Due Process.

This is vital because this High Court has made it clear that it is of great Constitutional importance that "justice must satisfy the appearance of justice", *Levine v. United States*, 362 U.S. 610, 80 S.Ct. 1038 (1960), citing *Offutt v. United States*, 348 U.S. 11, 14, 75 S.Ct. 11, 13 (1954). The federal 8th Circuit concurred in *Pfizer Inc. v. Lord*, 456 F.2d 532 (8th Cir. 1972), "It is important that the litigant not only actually receive justice, but that he believes that he has received justice." The U.S. Constitution guarantees the right to a fair legal process, which is essential in satisfying Due Process. *See United States v. Sciuto*, 521 F.2d 842, 845 (7th Cir. 1996) ("The right to a tribunal free from bias or

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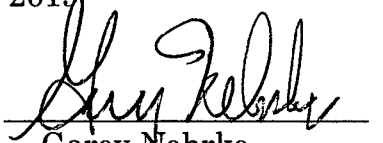
[22] *See* Samantha Joseph, Can He Say That? Frustrated Attorney Asks, "What's Wrong With the Third DCA?", Daily Business Review, Available at: https://www.law.com/dailybusinessreview/sites/dailybusinessreview/2018/02/09/can-he-say-that-frustrated-attorney-asks-whats-wrong-with-the-third-dca/?slreturn=20180321235644

prejudice is based, not on section 144, but on the Due Process Clause.").

CONCLUSION

For all these reasons, the Court should grant this petition.[23]

Dated: September 13th, 2019

By: 

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[23] Alternatively, a denial of certiorari does not limit this Supreme Court's power to right the numerous wrongs against the Petitioner and his family by vacating the judgement herein and therein the second unlawful foreclosure against him and dismissing with prejudice as sanction for Wells Fargo's numerous atrocious acts of Fraud on the Court, the Petitioner and his family.