ORIGINAL

20-1713

No. 21-___

IN THE

Supreme Court of the United States

Symon Mandawala.,

Petitioner,

v.

Era Living LLC.,

Respondents.

On Petition for a Writ of Certiorari to
the Washington State's Supreme Court

PETITION FOR A WRIT OF CERTIORARI

Symon Mandawala
P.O. Box 5512
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Petitioner Pro-se

QUESTIONS PRESENTED

The Question(s) Presented is:

As of Matter of Equal Protection Clause in the 14th Amendment right of the U.S constitution:

(1)(a) while racially civil rights action is pending, without advisory to the court (court order), can a corporate defendant and their representatives (attorneys) demand reservice of the process to the plaintiff with the threat of untimely motion to dismiss without violating 42 U.S.C 1985(2) last clause?

(b) Does attorney-client conspiracy or intercorporation doctrine defenses apply to 42 U.S.C 1985(2) last clause pursuing to its criminal elements of "impeding, hindering, obstructing, or defeating, in any manner, the due cause of justice in any state" as federally classified as criminal in 18 U.S.C 1505 and 3512?

As of matter of Due Process Clause in the 14th Amendment right of the U.S constitution:

(2)(a)Does a trial judge have the discretion to deny Plaintiff a one-time Amendment of a complaint or the service of process when the defendant has not to file responsive pleading (answer)yet?

(b) Where the state court rule designates insufficient service defense to be presented within 20days after the service of process. Does a defendant file notice of appearance to the court toll the 20 days rule to 124 days for the defendant to file a motion to dismiss under that rule?

CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 29.6 of this Court's Rules, the petitioner is not a corporation, neither owns 10% or more of any entity stocks.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner respectfully seeks a writ of certiorari to review the order to dismiss Mandawala's state racial civil rights complaint Affirmed by Washington State Court of Appeals and denial of the Petition for Review by Washington State Supreme Court.

OPINIONS BELOW

The opinions below is unpublished one. The opinions respecting Symon Mandawala v. Era Living Llc, 80543-6(Wash. Ct.App 2020)

JURISDICTION

The Washington State Court of Appeals entered the Affirming dismissal on November 2, 2020 and Washington State Suprem Court denied a Petition for Review on March 2, 2021 In which 42 U.S.C 2000e was claimed to be violated and the state appropriet agencey gave the right to sue notice. The Court has jurisdiction under 28 U.S.C. §1254(1) and or providing binding instructions §1254(2).

STATEMENT

Petitioner, Symo Mandawala, was an employee of the defendant ERA LIVING AT ALJOYA from October 29, 2012, until May 3, 2016. Symon's conduct was good during his tenure of employment until his constructive discharge. Even as diligent and hard-working as he was, his work became dangerous to his safety and unattainable. Mandawala is a former employee of the responding corporation Era Living LLC. This case arose from incidents that happened when Mandawala was working at one of the Era Living business facilities, namely Aljoya Thornton Place near Northgate Mall, Seattle, Washington State. Era Living LLC hired Mandawala on October 10, 2012, and his job was wrongfully terminated on May 3, 2016, that he

received unemployment benefits from the Department of Unemployment in Washington State.

The discrimination events in Mandawala's complaint were ongoing and per the statute of limitation. The first incident happened on February 8, 2016, where his coworkers subjected him to segregated work conduct and racially employment promotions of white employees. The second event happened around March 11, 2016, whereby Mandawala was looking for urgent medical attention. The Manager at the time, Mr. Dennis Newman Jr, refused to allow Mandawala to get medical attention. However, the same Manager allowed white coworkers of Mandawala, namely Wendy, white and female, the other one Tony white male, to take the day off for a cold. This was the same morning when those two white coworkers, Mandawala, were allowed to have a day off while Mandawala was denied urgent and immediate dental care. Another event happened around April 22, 2016; this time, the same Manager who denied Mandawala medical attention decided to give a task to clean the Exhausting kitchen system. Mandawala has never been tasked before. Era Living has been hiring the third-party licensed and professionals Exhaust Air System cleaner per Seattle city commercial building and safety code 2015, section 609.1-4. It was the first time for Mandawala to do such higher voltage electric system cleaning work, and he was severely injured that he is still struggling with the effect of the injury.

Before Mandawala's injury, two separate former Era Living employees unlicenced, not professions, were already severely injured for just simply trying to wipe out grease from the equipment. One was a former Executive Kitchen Manager (Jace Brettner)

who was replaced by Mr. Newman Jr., who had a high voltage shock in his head while trying to wipe out oil licking from the system's light. Mr. Brettner and Mr. Newman Jr. Worked together before and were even friends outside work, and Mr. Newman was known and told about how severely Mr. Brettner was injured. The second injury was a dishwasher (Mr. Charly White) who voluntarily tried to clean the same Exhusting system, and he fell and injured his back. As noted, these injuries were before Mandawala's injury. It is undisputed that Era Living LLC had knowledge of the equipment causing injuries and ignored that knowledge to order Mandawala to clean the system that ended up causing him injured. The Washington laws prohibit deliberately caused injuries of employees and are actionable under (RCW 51.24.020).

After two years of medical treatment from the hip injury sustained while working at Era living, Mandawala filed a lawsuit in Washington State Superior Court in Seattle on February 4, 2019. Since his injury, Mandawala lives in Texas, where his relatives were nursing his injury and worked there.

Mandawala first attempted to serve Era Living through Friend as an in-person service of process(Mr. Lobole). His friend was frustrated after Mr. Lobole was told to wait for someone to pick the court papers at the front desk of Era living home office. The process server left the paper at the front desk of Era Living office downstairs, and other court paper copies were sent through regular mail to support in-person service under Washington state court rule 4(d)4,4(e.).

The unavailability of Mr. Lobole's declaration on his in-person service was due to his relocation to east Africa for Jehovah's witness churches to rebuild its damage by wind disaster, Mandawala reserved the

Era Living again, this time by Certified Mail return receipt requested. The March 25, 2019 return receipt, in which the envelope was shown to Trial Court, arrived as the date on the return receipt and was signed by Era Living as an affidavit to support their motion to dismiss. On April 10, 2019, Era-Living made an appearance to the court.

While the case was pending on April 22, 2019, without filing advisory to the court, Era Living seeks Mandawala to reserve the process because the Mailed envelope did not designate Era Living's internal Principal officer to receive the court papers. The Era Living's counsel, directly without the Trial Court's consent, told Mandawala that the service he made should be approved in Washington State. If he does not re-service within ten days (which is May 2), Era Living intends to file a motion to dismiss. (see Appendix D). Take a note at this time the responding or raising a defense of insufficient service of process time of 20 days under Washington state court already passed with nine days.

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Without an attorney-client relationship or court-appointed counsel approved, this legal advice

was no attorney client-relationship between Mandawala and Era Living counsel. Neither Mandawala seeks Era living counsel any pro-bono legal help. Mandawala was a party having opposite interests in what Counsel for Era Living is for in the case. Much more, whatever Era Living counsel brings on litigation, is in their client's best interest, Era Living, not Mandawala. Still, both Appeals Court and Trial Court did not see how inappropriate (see Appendix E at 28) it is to provide legal advice to the opposite party or intimidate Plaintiff as Exhibit F was shown. The trial court went even on record to praise Era Living's counsel that she volunteered to advise Mandawala(see Appendix E at 28). the trial court views this as Legal Samaritan(pro-bono information) see Attached Affidavit.

After 124 days, and April 10, 2019 Era Living return receipt, then April 22, 2019, without court advisory or consent to provide legal advice to the opponent of their client, on July 26, 2019, Era living filed(see Appendix D) a motion to dismiss for insufficient of service of process. it was 110 days from the date Era Living made an appearence in court.

The court was notified about deficiency in service of process on August 23, 2019 at the hearing more that 130 day by Era Living for the first time, and denied requeat by Mandawala to exercise its discretion as stated in Washington State Superior Court Rule 4(h) and the case was dismissed.

Mandawala timely filed a notice of appeal to the Washington State Court of Appeals in division 1 and the court affirmed the Trial Court dismissed the case Appedix A. The Washington State court of Appeals further raised a conflict view that the service of process is strictly and cannot be amended contradicting to their own Washington State Court

Rule(h) Appidix A provides that the court can order any process of service to be amended.

The out of court interaction by Era Living direct to Mandawala is federally prohibited and can be sued as conspirancy to intimidate civil rights litigant. Considering that this court said section 1985 congress intended to protect the caurse of civil rights justice when added "equal protection" to the statute not a federal law tort. Griffin v. Breckenridge, 403 U.S. 88, 102 (1971) the state court is bounded by the statute to provide enforcement and protection to civil rights litigants. See Howlett v. Rose, 496 U.S. 356 (1990) Id. At 361-383 Despite a lawsuit jurisdiction made it absolutly to be in hands of federal district court. **see 28 U.S.C § 1343**

Thus, when Mandawala raised the federal question to Washington state Court of Appeal through reply to response brief and in details again to the Washington State Supreme Court as issue of Petition for Review and the Washington State Supreme court Denied to Review Mandawala's timely petition.

It is why this court as the highest court in this land is requested to clarify and review the disregarded federal issues by all Washington State court. This court opinion will set appropriet direction regarding the state courts that are setting new rules to coporations that are violating the United States Consitution rights of the citizens.

REASONS FOR GRANTING THE WRIT

This is as straight forward a certiorari candidate as any civil rights case that has significance to the U.S constitution can be. It is manifestly important: A host of Federal appellate judges, civil rights scholars, and legal practitioners, upon seen the opinion, have stressed that

the result below is untenable - invalidating previously irreproachable due causes of civil rights proceedings and precipitating what State Judge Loura Inven (retired) and State Appallet Judge Dwyer called "a new crisis of civil rights law and integrity of judicial proceedings." Corporations will not abide by the court rules, and the court is powerless but accepting anything from corporate as lawful, even intimidating pro-se or harassing them. This is an indirect fall of the law, especially federal law, in-state judges' hands.

WASHINGTON STATE COURTS ERRONEOUSLY VIEWS OUT OF COURT INTIMIDATION OF CIVIL RIGHTS PRO-SE PLAINTIFFS AS COURTEOUS LEGAL HELP TO PLAINTIFFS, DANGEROUSLY UNDERMINE THE PURPOSE (PROTECTION) AND THE SPIRIT OF 42 U.S.C 1985(2) AND 18 U.S.C 3521

Both Washington state court of appeals and Trial court incorrectly viewed the Era Living counsel's letter demand of re-service of process exhibit E direct to Mandawala without seeking the court order as a courteous or help to Mandawala. See (Appedix A and E at 28). Such undermines the purpose and spirit of the federal statute 42 U.S.C 1985 (2) last clause. That prohibits any conspiracy to impede in any manner whether it was courteous or not as long as the result of such conspiracy defeated the normal cause of justice is a violation of section 1985(2). Although the jurisdiction of a lawsuit under section 1985(2) is in the federal district court's hands, the application of prohibition or protection is for both state and federal courts. Pursuing to the US Supreme Court precedent in Howllet v. Rose (2000) *Id* said that if the State has similar law as the federal one, the State Court should exercise the protection as it could be in Federal court. See Howlett v. Rose, 496 U.S. 356 (1990) ld. At 361-383 (the court applied the U.S Constitution Article VI, clause 2). Mandawala's

complaint, in this case, alleged that he was subject to racial and other federally and Washington state's indifferent work conditions compared to white coworkers. Mandawala claimed Federal Act of civil rights Title VII and RCW 49.60.180 (3) in his state complaint.

Mandawala state complaint pleaded that his former manager subjected him to indifferent racial working conditions. When the manager allowed the white female coworker named Wendy to seek medical attention but refused to allow Mandawala at the same time, who was in severe pain the same time, to seek urgent dental attention the same day. See Mandawala v. Era Living complaint.

The Federal statute 42 U.S.C. 1985(2) last clause requires "racial" or "class-based animus" as the same as it likes to sister statute 42 U.S.C. 1985(3) pursuing to U.S. supreme court in Griffin *Id* at 88, 102 (1971) because of wording equal protection.Grinffin court ld at 88-100, said it does not also require a plaintiff to file a (section 1985(2))(original 1985(3) statute substituted) lawsuit. Specifically for section 1985, the court should protect the statute as its purpose is to protect civil rights litigants rather than federal tort law.

Era Living and their attorney directly contacted Mandawala without a court order, and who is racially grieved plaintiff, and demanded re-service of the process with the threat of untimely motion to dismiss if Mandawala would not comply with the demand. Both attorney and their client (Era Living) conspired to harass or threaten or deter (Exhibit D) to impede the course of justice in the Superior Court. See 42 U.S.C 1985(2)..

Much more, at the time Era Living and their counsel threatened to dismiss Mandawala's complaint, the time for filing such motion was past due with 9 days. The undeniable truth is that to file an Advisory to the court does not extend the time for responding of 20 days presenting the defense under Washington state court civil rules 12(a).

Federally, it is prohibited for the defendant's attorney to make such contact with the plaintiff, and it is considered intimidation and harassment that violates federal criminal code 18 U.S.C §876 and §3521. see US v. Tison H. Claude jr., Marcelino Echevarria and Scan realty Service, inc., 780 F.2d 1567 (11th cir. 1986)

Era Living intend to say their attorney's action is part of one party action, (intracorporation doctrine) to deny attorney-client conspiracy to intimidate Mandawala because the conduct is classified as criminal federally, and its a felony or misdemeanor in many states to intimidation or harassment court witness or litigant. See federal circut court exempting conduct classified as criminal conspiracy as a defense (intra-corporation).

First, Fifth, Six, Eighth and Nineth Eleventh Circuits Federal Courts hold that any criminal or fraud conspiracy whether raised by a prosecutor or an individual in section 1985 claim intracorporation doctrine defense is exempted or does not apply McAndrews v. JA Blackwell Jr., T.A. Graham, et al.,177 F.3d 1310 (11th Cir. 1999) see 1st Circuit in US v. Peters 732 F.2d 1004, 1007-08 (1st Cir. 1984), 5th Circut in Dussouy v. Gulf Coast investment Corp.,660 F.2d 594, 603 (5th Cir. 1981) 6th circuit in US v. Ames Sintering Co., 927 F.2d 232, 236 (6th Cir. 1990) (quoting that " 'in the criminal context a corporation may be convicted of conspiracy with its offers'") regardless who brought the claim of that criminal conduct. See(US v. S Vee Cartage Co., 704 F.2d 914, 920 (6th Cir 1983) 8th circuit in US v. Hugh Chalmers Chevrolet-Toyota, inc 800 F.2d 737, 738 (8th Cir.

1986) and 9th Circuit in US v. Hughes Aircraft Co., 20 F.3d 974, 978-79 (9th Cir. 1994)

Therefore, both the Trial court and the Appeals Court harmonizing exhibit F the Harassment and intimidation Mandawala is federally a criminal conduct. It is an erroneous view that undermines the purpose 42 U.S.C 1985(2) as it protects any racial or class-based animus litigant in state courts. (See especially the U.S 5th Circuit court in Dussouy case where attorney conspired with their corporation client) Moreover, since Mandawala made an Advisory to the court about Era Living's attorneys out-of-court threat without court's advisory notification to do so. The trial court's view on Appendix E at 28 undermined the purpose and spirit of section 1982(2), which is to "protect civil rights litigants and witness" seeking civil right justice in state court like what Mandawala did.

Era Living demands were not really in good faith considering the 124 days of filing Appendix D insufficient service of process defense instead of 20 days as the trial court reasoning on Appedix E page 28 and the Appeals court held it as appropriate an error of judicial view. It is why this court should clarify if attorney-client conspiracy can be the factor for the attorney to act contrary to the state law for intracorporation activities defense or attorney-client relationship defense. Considering the section 1985(2) conspire for the purpose of impeding, obstructing, hindering the course of justice as all are criminally classified under 18 U.S.C. 3521. The state lower court decisions allowing the corporate defendants to intimidate the plaintiff in the name of courteous or free legal help is not the purpose of the Equal Protection clause in the 14th Amendment. Then there is no protection for plaintiffs of civil rights cases in Washington

State courts as other state courts do provide it without having jurisdiction. That will open the door to undermine the similar state law RCW 49.60 and make it a worthless statute if its sister statute of federal 42 U.S.C. 2000 will not be considered wisely.

WASHINGTON STATE COURTS' VIEW OF THE COURT HAS THE DISCRETION TO DENY PLAINTIFF A RIGHT TO AMEND THE COMPLAINT, OR PROCESS EVEN WHEN THE DEFENDANTS DO NOT FILE AN ANSWER. IT IS CONTRADICTING ALMOST ALL FEDERAL CIRCUIT COURT RULINGS ON THE SIMILAR MATTER AND TO THEIR OWN WASHINGTON STATE SUPERIOR RULE 4 (h).

When this issue comes up to the US Eleventh circuit court of appeals after the US district court judge dismisses the lawsuit for reasons that Insufficient services of process, the US 11th appeal court looked at the service of process and pleadings. See Williams v. Board of Regents of University System of Georgia, 477 F.3d 1282, 1292 (11th Cir. 2007) The US 11th circuit held that when a plaintiff file a complaint in district (trial) court with pleading in it, those pleadings need the defendant's responsive pleadings for the court to balance the case facts' merit.

The US 11th circuit court found when the defendant does not file a responsive pleading that challenges the complaint's pleadings, The district court lacks the discretion to deny any amendment of the complaint. Because whatever plaintiff amended is what the defendant will respond to and denying the plaintiff such amendment is an abuse of court discretion as it looks, the court has judged the plaintiff without the defendant's side of the story. "When the plaintiff has the right (before responsive pleading filed) to file an amended complaint as a matter of course, the court lacks the discretion to reject the

amendment. See Thomas v. Home Depot USA Inc. No. C06-02705 (N.D. Cal. Jul. 25, 2007) (emphasis added) quoting See. Williams. 477 F.3d 1282, 1292 at n.6*Id*

In Mandawala's case, the trial judge acknowledged that there were defects; the trial judge raised the question if the court has the discretion to allow Mandawala to amend the process. (see Appendix E) The same amendment process Era Living attorney was demanding Mandawala without a court order. (See Appendix D)

By applying the US 11th circuit court opinion, the trial court lacks the discretion to deny the plaintiff of any amendment when the defendant does not file responsive pleading (Answer). It makes that Judge Iveen did luck discretion to deny Mandawala anamendment because Era living did not file responsive pleading (answer). Instead, the court had the Wash.St.Sup.Court.Rule12(b)5 motion to dismiss filed by Era Living based on insufficient of service of process. Motion to dismiss is not a responsive pleading as defined in Wash.St.Sup.Court.Rule7, similar to Fed.R.Cv.P 7.

The Majority of the federal courts have held that ("Motion to dismiss is not a responsive pleading") Mc Gruder v. Phelp, 608 F.2d 1023, 1025 (5th Cir. 1979), (Motion to dismiss not responsive pleading for the purpose of Fed.R.Civ.P 15); Hanraty v. Ostertag, 470 F.2d 1096, 1097(10th Cir. 1972) Miller v. American Export Lines, inc., 313 F.2d 218 n.1(2d Cir. 1963) (Motio for Summary judgment not responsive pleading for purpose of Fed.R.Civ.P 8).

This is also the views of Federal Circuit Court of their territory the 9th federal circuit

court. A Motion to Dismiss the complaint is not a responsive pleading. Allen v. Veterans Admin 749 F.2d 1386, 1388 (9th Cir 1984) and (Rule 12(b)6 motion to dismiss not a responsive pleading) see Mayes v. Leipziger, 729 F.2d 605, 607 (9th Cir 1984)

The Federal Appeals court of the 9th circuit in Allen's case concluded that even the district court dismiss the case still the plaintiff had the right to amend. This is exactly with Mandawala's case, where the trial court did not allow Mandawala a single amendment despite no answer from Era Living up to day. Makes it ununiform judicial system.

Considering that if the defendant doesn't file a responsive pleading, a plaintiff as a matter of right has one chance to amend either the process or the complaint. The question could have been gone to Era Living to demonstrate if any legal injury could have occurred to them if Mandawala did amend the process, in which the answer is NOT at ALL since there is no answer per Wash.St.Sup.Court.R 4(h) last clause.

*It does not require a university professor of language to differentiate the language in rule 4h of "Process" and "the documents used to that process." Moreover, the word "any process"

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*Wash. Sup.C.R4(h) Amendment of Process; "At any time in its discretion and upon such terms as it deems just, the court may allow any process or proof of service thereof to be amended, unless it clearly appears that material prejudice would result to the substantial rights of the party against whom the process issued."

cannot change to one process of amending summon only as Affidavit A says.The word "any" means "whatever, more than one, other processes ." that means "whatever process"
the court has the discretion to order an amendment."unless it clearly appears that material prejudice would result to the substantial right of the party against whom the process issued." see Wash.St.Sup.Court.R4h last clause.

Appeals court saying in Appendix B at 9 and 10 says the "writ" means "summon" only. But "writ" in that meaning is all court's orders including Subpenors, writ of Prohibition, extraordinary writ, writ of mandamus, order to show the cause, and summons.

The issue here is simply no need to go round the cage of truth; if the defendant does not file an answer, the court has no power to deny an amendment. Much more Appendix E demonstrate that mandawala was asking the court to amend under Wash.St.Sup.Court.R4(h) not what court of appeals referred to in Exhibit A of Wash.St.Sup.Court.R15(a) even a summon can be amended as long as the respondent does not officially respond to the original one.

The Washington state appeals court should not encroach the words of the rule to favor Era Living for being a corporation as such means judicial bias and setting the washington state court rules as previlage to corporation and not other litigats.

THE WASHINGTON STATE COURT RULES ARE PRIVILEGE, EXEMPTING, OR NOT APPLY TO SOME CORPORATE DEFENDANTS SUCH AS ERA LIVING LLC, AND ALLOWED UNTIMELY OF FILING MOTION TO DISMISS DESPITE WASHINGTON STATE COURT SUPERIOR COURT RULE 12 HAS A 20 DAY TIME LIMIT?(ALLOWING WAIT THEN AMBUSH)

The issue here is a narrow one because a lawsuit does not commence if a plaintiff served an improper defendant. This is a different situation to services of a process that is insufficient in documents to the proper defendant. In a case where the improper defendant has been served the time of raising insufficient of service tolled until the day such service has arrived at the proper defendant, that is when the **Wash.St.Sup.Court.R12(a) time starts running out on that proper defendant. Here, in this case, the proper defendant (Era Living LLC) was served a complaint that was filed in superior court immediately acknowledged that there was a defense of shortage of documents (insufficient of service of process) but allowing the timeline of raising this defense of insufficient of the service process of 20 days ***(see Washington state's Superior Court Rule12(a))to run out up top 124

**Wash.Sup.C.R.12 DEFENSES AND OBJECTIONS (a) When Presented. A defendant shall serve an answer within the following periods: (1) Within 20 days, exclusive of the day of service, after the service of the summons and complaint upon the defendant pursuant to rule 4;

***Wash.Sup.C.R.12(b) How Presented... Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross claim, or third party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: (1) lack of jurisdiction over the subject matter, (2) lack of jurisdiction over the person, (3) improper venue, (4) insufficiency of process, (5) **insufficiency of service of process**, (6) failure to state a claim upon which relief can be granted,

days ,and then claiming the same way as an improper defendant? (see Exhibit C & F) see Sinwell v. Shapp, 536 F.2d 15 (3d Cir 1976)(improper for the court to dismiss [complaint]waived by lack of timely assertion)

A proper defendant makes an appearance to the court does not constitute a waiver of the defense of insufficient service of process. But proper defendant untimely or unseasonably filling insufficient service of process defense (without a cause) after making such appearance constitute waived a defense of insufficient service of process. See Santos v. State Farm Fire and Cas. Co. 902 F.2d 1092 (2d Cir. 1990) if raised such defense of insufficient services of process untimely or unseasonably or with conducts contrary to related claimed or defense by the defendant clearly satisfy the waiver of such defense.

If any proper defendant is served and waits whatever period they would like to raise the defense of insufficient service as the same as an improper defendant or no service at all party does, it will be proper for the Washington state supreme court to remove the insufficient of service from Wash. Sup.CR12(b). Because of Wash.Sup.CR12(b) defenses governed by the timeline in Wash.Sup.CR12(a).

In Federal circuit courts handling the defense of insufficient of service of process, they held that "defendants must not only comply with the letter of the rule only, but also "with spirit of the rule, which is 'to expedite and simplify proceedings in the ***court." id (quoting 5A Charles A. Wright & Arthur R. Miller, Federal Practice and Procedure § 1342 (2d ed. 1990)) see also US v. Ziegler Bolt &

Parts Co., 111 F.3d 878, 882 (Fed.Cir.1997) (holding that a defendant's literal compliance with the procedural rule does not end the waiver analysis)

The 8th Federal Circuit Court went further with a very clear about dangling around with time and conducts of the defendants who claims defense of insufficient of service or personal jurisdiction. "Failure to assert it **seasonably**, by formal submission in a cause, or by submission through **conduct.**" See Yeldell v. Tutt, 913 F.2d 533, 539 (8th Cir. 1990) see also other federal Circuit (insufficient service of process defense 'may be waived by 'formal submission in a cause or by submission through **conduct")** Trustee of central laborers' Welfare fund v. lowery 924 F.2d 731, 732 (7th Cir 1991) Quoting Marcial Ucin, S.A. v. SS Galicia, 723 F.2d 994,996-97 (1st Cir 1983)

The 5th Circuit U.S Court of Appeals sorts the delay "without cause" as "sleeping on right" no court has discretion to entertain that delay as it costs the court and is unfair to the party whom such delay is issued. "However, equitable consideration or **tolling time** is only available in cases presenting "**rare and exceptional circumstances**" U.S. v. Riggs, 314 F.3d 796, 799 (5th Cir 2013) (emphasis added) and this is **"not intended for those who sleep on their rights"** Manning v. Epps, 688 F.3d 177, 183 (5th Cir 2012)

Dismissing a complaint under the insufficient service process should be interpreted unless there is an absence of service and absent of showing a good cause why there is no service at all. see Norlock v. City of Garland, 768 F.2d 654, 658 (5th Cir. 1985) This does not support Era Living delay up 124 days "**without a cause**" to raising insufficiency of service of process from the date of appearance or mail return receipt. Norlock ld at

Era Living cannot raise any cause at this level of appeal if it failed to raise it at the Trial Court.

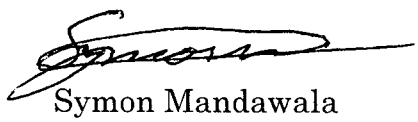
Much more defense attorney demanding (Appendix D) anything merit to the case from the plaintiff without a court order is prohibited federally and considered intimidation to the court witness. See US v. Tison H. Claude jr., Marcelino Echevarria and Scan realty Service, inc., 780 F.2d 1567 (11th cir. 1986) (applied Federal criminal code 18 U.S.C 3523, 3525 to defense attorney seek information to the opposition party without court order)

This Court should take this opportunity to pro-vide the guidance the Washington state courts and clarify what the United State Constitution requires on federal laws applied in state to avoid abinguas results neither it nor Congress could have intended.

CONCLUSION

This Court should grant certiorari.

Respectfully submitted,



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