

09/23/21

MD

21-473

No. 21-_____

In The
Supreme Court of the United States

ORIGINATOR

DANIEL G. SZMANIA,

Petitioner;

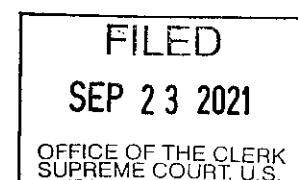
vs.

WELLS FARGO BANK N.A., AS TRUSTEE
FOR BEAR STEARNS ARM TRUST 2007-3,

Respondent.

On Petition For A Writ Of Certiorari
The Supreme Court Of Washington No. 99578-8

PETITION FOR WRIT OF CERTIORARI



DANIEL G. SZMANIA, Defendant/Appellant, Pro Se
September 23, 2021
Rule 13, 90 days from 6/30/2021
HM1 USNR Retired
U.S. Supreme Court No. 11-6137
U.S. Supreme Court No. 18-734
PO Box 757, Brush Prairie, WA 98606-0757
360-718-1402, dszmania@quixnet.net

QUESTIONS PRESENTED, Rule 14.1(a)

- 1) Did THE SUPREME COURT OF WASHINGTON error and fail in its duty when not enforcing, not recognizing and ignoring the civil court case Removal to Federal Court under 28 U.S.C. § 1446(d)? *See* <https://www.law.cornell.edu/uscode/text/28/1446>
- 2) Did THE SUPREME COURT OF WASHINGTON error and fail in its duty when not enforcing, not recognizing and ignoring the Lack of Personal Jurisdiction over Petitioner Daniel G. Szmania (Szmania) due to Lack of Service of Process by Wells Fargo Bank N.A., As Trustee for Bear Stearns Arm Trust 2007-3, (Wells)? Especially since the Washington State Appellate Court Division II, No. 50523-1-II, Ruled as such on January 3, 2019 saying on page 10: "*We reversed based on Wells Fargo's improper service of process.*" **Appendix 4.** *See* <https://www.courts.wa.gov/opinions/pdf/D2%2050523-1-II%20Unpublished%20Opinion.pdf>
- 3) Did THE SUPREME COURT OF WASHINGTON error and fail in its duty when not enforcing, not recognizing and ignoring the Res Judicata Doctrine that prohibits Wells from starting a new law suit against Szmania after a previous case was appealed by Szmania to THE SUPREME COURT of the UNITED STATES, No. 18-734, which the Petition was Denied Review on February 19, 2019? **Appendix 2.** Did THE SUPREME COURT OF WASHINGTON act within the administration of justice or was their actions an arbitrary denial of Szmania's property; his home? *See*

QUESTIONS PRESENTED – Continued

<https://www.supremecourt.gov/search.aspx?filename=/docket/DocketFiles/html/Public/18-734.html>

4) Was Petitioner's Due Process, especially Procedural Due Process of the Fifth and Fourteenth Amendments to the United States Constitution Violated by THE SUPREME COURT OF WASHINGTON when it did:

- a) Not enforce, did not recognize and ignored the civil court case Removal to Federal Court under 28 U.S.C. § 1446(d)?
- b) Not enforce, did not recognize and ignored the Lack of Personal Jurisdiction over Szmania due to Lack of Service of Process by Wells when the Washington State Appellate Court Division II, No. 50523-1-II, Ruled as such on January 3, 2019 saying on page 10: “*We reversed based on Wells Fargo's improper service of process.*” **Appendix 4.** See <https://www.courts.wa.gov/opinions/pdf/D2%2050523-1-II%20Unpublished%20Opinion.pdf>
- c) Not enforce, did not recognize and did ignore the Res Judicata Doctrine that prohibits Wells from starting a new law suit against Szmania after a previous case was appealed by Szmania to THE SUPREME COURT of the UNITED STATES, No. 18-734, which the Petition was Denied Review on February 19, 2019? **Appendix 2.** Did THE SUPREME COURT OF WASHINGTON act within the administration of justice or was their actions

QUESTIONS PRESENTED – Continued

an arbitrary denial of Szmania's property; his home? And was their inactions of not applying Res Judicata to the case, Was this a Violation of the Equal Protection Clause of the Fourteenth Amendments to the United States Constitution and within the administration of justice or was their actions an arbitrary denial of Szmania's property; his home?

LIST OF PARTIES, Rule 14.1(b)(i)

DANIEL G. SZMANIA,
PETITIONER,

Vs.

**WELLS FARGO BANK N.A., AS TRUSTEE FOR
BEAR STEARNS ARM TRUST 2007-3,**

RESPONDENT.

CORPORATE STATEMENT,
Rule 14.1(b)(ii) & Rule 29.6

WELLS FARGO BANK N.A., AS TRUSTEE FOR BEAR STEARNS ARM TRUST 2007-3, is a national bank headquartered in Sioux Falls, South Dakota. It is owned by Wells Fargo & Company is an American multinational financial services company with corporate headquarters in San Francisco, CA.

See https://en.wikipedia.org/wiki/Wells_Fargo

As of the date of this writing (7/21/21) no person or company owns a 10% or greater share stake of Wells Fargo stock ticker symbol WFC.

See <https://money.cnn.com/quote/shareholders/shareholders.html?symb=WFC&subView=institutional>

Wells Fargo is a criminal enterprise that steals fully paid off homes of disabled Veterans like that of the Szmania ***while using death threats.***

BEAR STEARNS ARM TRUST, MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2007-3. (Bear

CORPORATE STATEMENT,
Rule 14.1(b)(ii) & Rule 29.6 – Continued

Stearns) Is a closed Business and Security and solely owned by J.P. Morgan Chase. It was LISTED and CLOSED on 1/20/2009, SEC Form 15d-6. See <https://www.sec.gov/Archives/edgar/data/1392865/000105640409000024/0001056404-09-000024.txt> *I ask the Court to Judicially Notice this linked document.

LIST OF ALL PROCEEDINGS, Rule 14.1(b)(iii)

**0) UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT
TACOMA, No. 3:16-cv-5644**

DANIEL G. SZMANIA, Plaintiff,
Vs.

E-LOAN, INC., BEAR STEARNS ARM TRUST,
MORTGAGE PASS-THROUGH CERTIFICATES,
SERIES 2007-3, BENJAMIN D. PETIPRIN,
WELLS FARGO, N.A., and JOHN G. STUMPF,
Defendants.

Judgment date: November 21, 2016, Dkt 65.

**1) UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT, No. 16-36055.**

DANIEL G. SZMANIA, *Plaintiff-Appellant*,
Vs.

E-LOAN, INC., et al. (WELLS FARGO BANK,
N.A.), *Defendants-Appellees*.

Judgment date: July 11, 2018 (Mandate Dkt 80)

LIST OF ALL PROCEEDINGS,
Rule 14.1(b)(iii) – Continued

**2) IN THE SUPREME COURT OF THE
UNITED STATES, No. 18-734.**

DANIEL G. SZMANIA, *PETITIONER*,
Vs.

E-LOAN, INC.; et al. (Wells Fargo Bank, N.A.)
RESPONDENT(s).

Judgment date: (Writ of Certiorari Denied February 19, 2019 Dkt 82)

**3) IN THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR CLARK
COUNTY, No. 16-2-02606-4.**

WELLS FARGO BANK, N.A., AS TRUSTEE FOR
BEAR STEARNS ARM TRUST 2007-3, *Plaintiff*,
Vs.

DANIEL G. SZMANIA, *Defendant*.

Judgment date: (June 23, 2017 Dkt 25).

**4) DIVISION II, COURT OF APPEALS OF
THE STATE OF WASHINGTON No. 50523-1-II.**

DANIEL G. SZMANIA, *Defendant/Appellant*,
Vs.

WELLS FARGO BANK N.A., AS
TRUSTEE FOR BEAR STEARNS ARM
TRUST 2007-3, *Plaintiff/Respondent*.

Judgment date: January 3, 2019.

LIST OF ALL PROCEEDINGS,
Rule 14.1(b)(iii) – Continued

**5) DIVISION II, COURT OF APPEALS OF
THE STATE OF WASHINGTON, No. 53743-5-II.**

DANIEL G. SZMANIA, *Defendant/Appellant,*
Vs.

WELLS FARGO BANK N.A., AS TRUSTEE
OR BEAR STEARNS ARM TRUST 2007-3,
Plaintiff/Respondent.

Judgment date: January 5, 2021.

**6) THE SUPREME COURT OF WASHING-
TON, No. 99578-8.**

DANIEL G. SZMANIA, *Defendant/Petitioner,*
Vs.

FARGO BANK N.A., AS TRUSTEE FOR
BEAR STEARNS ARM TRUST 2007-3,
Plaintiff/Respondent.

Judgment date: June 30, 2021.

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APPENDIX, Rule 14.1(i) OPINIONS BELOW.

- 0) UNITED STATES DISTRICT COURT WESTERN DISTRICT OF WASHINGTON AT TACOMA, No. 3:16-cv-5644. Judgment date: November 21, 2016. **Appendix 0.**
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- 1) UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT, No. 16-36055. Judgment date: July 11, 2018. **Appendix 1.**
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- 2) IN THE SUPREME COURT OF THE UNITED STATES, No. 18-734. Judgment date: (Writ of Certiorari Denied Dkt 82) February 19, 2019. Appendix 2. Printed in Writ of Certiorari.....App. 3
- 3) IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR CLARK COUNTY, No. 16-2-02606-4. Judgment date: June 23, 2017. **Appendix 3. Printed in Writ of Certiorari**.....App. 4

**APPENDIX, Rule 14.1(i)
OPINIONS BELOW – Continued**

- 4) DIVISION II, COURT OF APPEALS OF THE STATE OF WASHINGTON No. 50523-1-II. Judgment date: January 3, 2019. **Appendix 4. Printed in Writ of Certiorari.** *See* Mandate February 14, 2019, **Appendix 5. Printed in Writ of Certiorari.** Case Remands **Appendix 6. NOT PRINTED IN WRIT OF CERTIORARI.** Motion to Recall the Mandate. **Appendix 7. Printed in Writ of Certiorari** App. 26
- 5) DIVISION II, COURT OF APPEALS OF THE STATE OF WASHINGTON, No. 53743-5-II. Judgment date: January 5, 2021. **Appendix 8. Printed in Writ of Certiorari**..... App. 42
- 6) THE SUPREME COURT OF WASHINGTON, No. 99578-8. Judgment date: June 30, 2021. **Appendix 9 and Appendix 9A. BOTH Printed in Writ of Certiorari**..... App. 52
- 7) **Report of Proceedings No.: 16-2-02606-4, for Court of Appeals No. 50523-1-II, Volume I, DATES TAKEN: April 28, 2017, and May 26, 2017, Appendix 10. NOT PRINTED IN WRIT OF CERTIORARI**
- 8) **Report of Proceedings No.: 16-2-02606-4, for New Court of Appeals No. 53743-5-II, Volume I, DATES TAKEN: July 19, 2019 and August 9, 2019, Appendix 11. NOT PRINTED IN WRIT OF CERTIORARI**

NOTES ON APPENDIX LIST

**0) UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT
TACOMA, No. 3:16-cv-5644**

DANIEL G. SZMANIA, Plaintiff,
Vs.

E-LOAN, INC., BEAR STEARNS ARM TRUST,
MORTGAGE PASS-THROUGH CERTIFICATES,
SERIES 2007-3, BENJAMIN D. PETIPRIN,
WELLS FARGO, N.A., and JOHN G. STUMPF,
Defendants.

Filed: July 20, 2016 Dkt 1 Removed by Wells.
Judgment date: November 21, 2016, Dkt 65.

Appendix 0. Printed in Writ of Certiorari.

**1) UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT, No. 16-36055.**

DANIEL G. SZMANIA, *Plaintiff-Appellant*,
Vs.

E-LOAN, INC., et al. (WELLS FARGO BANK,
N.A.), *Defendants-Appellees*.

Filed: December 19, 2016. Notice of Appeal Dkt 67
Judgment date: July 11, 2018 (Mandate Dkt 80)

Appendix 1. Printed in Writ of Certiorari.

Szmania timely appeals. See
<http://cdn.ca9.uscourts.gov/datastore/memoranda/2018/02/23/16-36055.pdf>

**2) IN THE SUPREME COURT OF THE
UNITED STATES, No. 18-734.**

DANIEL G. SZMANIA, *PETITIONER*,
Vs.

NOTES ON APPENDIX LIST – Continued

E-LOAN, INC.; et al. (Wells Fargo Bank, N.A.)
RESPONDENT(s).

Filed: September 27, 2018.
Judgment date: (Writ of Certiorari Denied Dkt 82)
February 19, 2019. (*Res Judicata case.*) **Appendix 2. Printed in Writ of Certiorari.** See
<https://www.supremecourt.gov/search.aspx?filename=/docket/docketfiles/html/public/18-734.html>

3) IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR CLARK COUNTY,
No. 16-2-02606-4.

WELLS FARGO BANK, N.A., AS TRUSTEE FOR BEAR STEARNS ARM TRUST 2007-3, *Plaintiff*,
Vs.
DANIEL G. SZMANIA, *Defendant.*

Filed: December 22, 2016. (3 days after start of Ninth Circuit Case Appeal! #1 = Res Judicata!) **Szmania REMOVED TO FEDERAL DISTRICT COURT on May 18, 2017.** See Dkt 18, ***Appendix 3. Printed in Writ of Certiorari.** Judgment date: (June 23, 2017 Dkt 25, Szmania timely Appeals to: DIVISION II, COURT OF APPEALS OF THE STATE OF WASHINGTON, No. 50523-1-II.) Because the State Court proceeded anyway! See <https://odysseyportal.courts.wa.gov/ODYPORAL/Home/WorkspaceMode?p=0>

***Appendix 3 pages 1-5 evidenced by Conformed copies filed in State Court and pages 6-15**

NOTES ON APPENDIX LIST – Continued

evidenced by Conformed copies filed in District Court.

**4) DIVISION II, COURT OF APPEALS OF
THE STATE OF WASHINGTON
No. 50523-1-II.**

DANIEL G. SZMANIA, *Defendant/Appellant*,
Vs.
WELLS FARGO BANK N.A., AS.
TRUSTEE FOR BEAR STEARNS ARM TRUST
2007-3, *Plaintiff/Respondent*.

Filed: June 23, 2017, Dkt 25.

Judgment date: January 3, 2019. Division II rules, reverses in Szmania's (Szmania) favor that Wells Fargo never properly personally Served Szmania. **Appendix 4. Printed in Writ of Certiorari.** See <https://www.courts.wa.gov/opinions/pdf/D2%2050523-1-II%20Unpublished%20Opinion.pdf>

See January 3, 2019 See Decision at:

Page 1, “Because Wells Fargo failed to comply with the alternative service statute and the trial court’s order for alternative service, we reverse.”
(Emphases added!)

Page 4, “We agree that Wells Fargo failed to comply with the alternative service statute, and the superior court’s order based on that statute, by failing to mail a copy of the summons and complaint by certified mail.” And “Scanlan v. Townsend, 181 Wn.2d 838, 847, 336 P.3d 1155 (2014). Proper service of the summons and complaint is

NOTES ON APPENDIX LIST – Continued

essential to invoke personal jurisdiction over the defendant. Id." (Emphases added!)

Page 5 "As a result, we reverse the superior court's denial of Szmania's motion to dismiss." (Emphases added!)

Page 10 "We reversed based on Wells Fargo's improper service of process." (Emphases added!)

Appendix 4:

See <https://www.courts.wa.gov/opinions/pdf/D2%2050523-1-II%20Unpublished%20Opinion.pdf>

See Mandate February 14, 2019, Appendix 5. Printed in Writ of Certiorari.

June 13, 2019 Case Remands/Returns on Szmania's Motion for Possession and Damages, Dkt 41. (Dkt 39-Dkt 48 supporting documents.) **Appendix 6. NOT PRINTED IN WRIT OF CERTIORARI.**

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR CLARK COUNTY,
No. 16-2-02606-4.

WELLS FARGO BANK, N.A., AS TRUSTEE FOR BEAR STEARNS ARM TRUST 2007-3, *Plaintiff*,

Vs.

DANIEL G. SZMANIA, *Defendant*.

July 19, 2019 (Dkt 60) and August 9, 2019 (Dkt 62) Motion Hearings on Szmania's Motion for Possession and Damages. (Dkt 41) The State Court Denies Szmania's Motion (Dkt 64), even though as noted in #4) above: DIVISION II, COURT OF APPEALS OF THE STATE OF WASHINGTON No. 50523-1-II, Ruled

NOTES ON APPENDIX LIST – Continued

on January 3, 2019 saying on page 10: “*We reversed based on Wells Fargo’s improper service of process.*” See **Appendix 4.**

Wells Fargo did NOT properly serve Szmania, therefore the State Court erred and lacked personal jurisdiction to evict Szmania and give Szmania’s house to Wells Fargo. The State Court further erred by dismissing the action on Wells oral motion to dismiss as the Plaintiff per CR 41 (a) (1) (B). (Dkt 63).

August 23, 2019. (Dkt 65) Szmania timely appeals again! Szmania also Motions the DIVISION II, COURT OF APPEALS OF THE STATE OF WASHINGTON No. 50523-1-II, to Recall the Mandate to use the same case.

On August 27, 2019 Division II Denies Motion to Recall the Mandate. **Appendix 7. Printed in Writ of Certiorari.** See <https://odysseyportal.courts.wa.gov/ODYPORAL/Home/WorkspaceMode?p=0>

5) DIVISION II, COURT OF APPEALS OF THE STATE OF WASHINGTON, No. 53743-5-II.

DANIEL G. SZMANIA, *Defendant/Appellant,*
Vs.

WELLS FARGO BANK N.A., AS TRUSTEE FOR BEAR STEARNS ARM TRUST 2007-3, *Plaintiff/Respondent.*

Filed: August 23, 2019, Dkt 65.

Judgment date: January 5, 2021 Division II ignores the lack of personal jurisdiction over Szmania that they ruled on in **Appendix 4**, the Removal of that case to

NOTES ON APPENDIX LIST – Continued

Federal Court by Szmania and Res Judicata. **Appendix 8. Printed in Writ of Certiorari.**

See <https://www.courts.wa.gov/opinions/pdf/D2%2053743-5-II%20Unpublished%20Opinion.pdf>

February 4, 2021, Szmania timely appeals to THE SUPREME COURT OF WASHINGTON, No. 99578-8 and includes Ex V: Szmania's REMOVAL TO FEDERAL DISTRICT COURT dated: May 18, 2017. *See* Dkt 18, *See Appendix 3.*

6) THE SUPREME COURT OF WASHINGTON, No. 99578-8.

DANIEL G. SZMANIA, *Defendant/Petitioner*,
Vs.

WELLS FARGO BANK N.A., AS TRUSTEE FOR BEAR STEARNS ARM TRUST 2007-3, *Plaintiff/Respondent.*

Filed: February 4, 2021. Judgment date: June 30, 2021
THE SUPREME COURT OF WASHINGTON Denied Review. **Appendix 9 and Appendix 9A. BOTH Printed in Writ of Certiorari.** *See https://dw.courts.wa.gov/index.cfm?fa=home.casesummary&casenumber=995788&searchtype=aName&crt_itl_nu=A01&filing-Date=2021-03-18%2000:00:00.0&courtClassCode=A&casekey=180714270&courtname=Supreme%20Court*

Szmania timely appeals to THE SUPREME COURT OF THE UNITED STATES.

7) Report of Proceedings No.: 16-2-02606-4, for Court of Appeals No. 50523-1-II, Volume I, DATES TAKEN: April 28, 2017, and May 26, 2017,

NOTES ON APPENDIX LIST – Continued

Appendix 10. NOT PRINTED IN WRIT OF CERTIORARI.

“And I have seen from both parties a notice of removal, . . .” See **Appendix 10.** See RP Volume I, Page 25 at 15 to 16. See Page 8.

“This case has not been remanded.” **Appendix 10.** See RP Volume I, page 42 at 3-22 and page 10 at 10. See Page 10.

“This case has not been remanded.” **Appendix 10.** See RP Volume I, page 10 at 10. See Page 13.

8) Report of Proceedings No.: 16-2-02606-4, for New Court of Appeals No. 53743-5-II, Volume I, DATES TAKEN: July 19, 2019 and August 9, 2019, Appendix 11.

NOT PRINTED IN WRIT OF CERTIORARI.

CITATIONS of Cases, Rule 14.1(d).

4) DIVISION II, COURT OF APPEALS OF THE STATE OF WASHINGTON
No. 50523-1-II.

DANIEL G. SZMANIA, *Defendant/Appellant,*
Vs.

WELLS FARGO BANK N.A., AS.
TRUSTEE FOR BEAR STEARNS ARM TRUST 2007-3,
Plaintiff/Respondent.

Filed: June 23, 2017, Dkt 25.

Judgment date: January 3, 2019. Division II rules, reverses in Szmania’s (Szmania) favor that Wells Fargo never properly personally Served Szmania. **Appendix 4. Printed in Writ of Certiorari.** See

NOTES ON APPENDIX LIST – Continued

<https://www.courts.wa.gov/opinions/pdf/D2%2050523-1-II%20Unpublished%20Opinion.pdf>

5) DIVISION II, COURT OF APPEALS OF THE STATE OF WASHINGTON,
No. 53743-5-II.

DANIEL G. SZMANIA, *Defendant/Appellant*,
Vs.

WELLS FARGO BANK N.A., AS TRUSTEE FOR BEAR STEARNS ARM TRUST 2007-3, *Plaintiff/Respondent*.

Filed: August 23, 2019, Dkt 65.

Judgment date: January 5, 2021 Division II ignores the lack of personal jurisdiction over Szmania that they ruled on in **Appendix 4**, the Removal of that case to Federal Court by Szmania and Res Judicata.

Appendix 8. Printed in Writ of Certiorari. See <https://www.courts.wa.gov/opinions/pdf/D2%2053743-5-II%20Unpublished%20Opinion.pdf>

6) THE SUPREME COURT OF WASHINGTON,
No. 99578-8.

DANIEL G. SZMANIA, *Defendant/Petitioner*,
Vs.

WELLS FARGO BANK N.A., AS TRUSTEE FOR BEAR STEARNS ARM TRUST 2007-3, *Plaintiff/Respondent*.

Filed: February 4, 2021. Judgment date: June 30, 2021
THE SUPREME COURT OF WASHINGTON Denied Review. **Appendix 9 and Appendix 9A. BOTH Printed in Writ of Certiorari.** See https://dw.courts.wa.gov/index.cfm?fa=home.casesummary&casenumber=995788&searchtype=aName&crt_itl_nu=A01&filing-Date=2021-03-18%2000:00:00.0&courtClassCode=A&casekey=180714270&courtname=Supreme%20Court

NOTES ON APPENDIX LIST – Continued

Szmania timely appeals to THE SUPREME COURT OF THE UNITED STATES.

JURISDICTION, Rule 14.1(e).

STATEMENT OF JURISDICTION:

The above #6) THE SUPREME COURT OF WASHINGTON, No. 99578-8.

DANIEL G. SZMANIA, *Defendant/Petitioner*,
Vs.

WELLS FARGO BANK N.A., AS TRUSTEE FOR BEAR STEARNS ARM TRUST 2007-3, *Plaintiff/Respondent*.

Filed: February 4, 2021. Judgment date: June 30, 2021
THE SUPREME COURT OF WASHINGTON Denied Review. **Appendix 9 and Appendix 9A**.

See https://dw.courts.wa.gov/index.cfm?fa=home.case_summary&casenumber=995788&searchtype=aName&crt_itl_nu=A01&filingDate=2021-03-18%2000:00:00.0&courtClassCode=A&casekey=180714270&courtname=Supreme%20Court

- (i) Szmania has 90 days from June 30, 2021 or until September 28, 2021 to file his Writ of Certiorari. *See* Rule 13-1 and 13-3. This is not a Rule 11 case.
- (ii) No dates for rehearing or any extensions of time.
- (iii) This is not a Rule 12.5 cross petition.
- (iv) Rule 10(a) and (c) is the statutory provisions believed to confer on this Court jurisdiction to review on a writ of certiorari on the judgment or order in question.

JURISDICTION, Rule 14.1(e)
STATEMENT OF JURISDICTION – Continued

(v) No notifications are required by Rule 29.4(b) “constitutionality of an Act of Congress” or (c) the “constitutionality of any statute of a State” is drawn into question in this case.

The United States Supreme Court which has Jurisdiction under 28 U.S.C. § 1257(a).

THE CONSTITUTIONAL PROVISIONS, treaties, statutes, ordinances, and regulations involved in the case, set out verbatim with appropriate citation. Rule 14.1(f).

1) Fifth Amendment to the United States Constitution: See https://en.wikipedia.org/wiki/Fifth_Amendment_to_the_United_States_Constitution

2) Fourteenth Amendment to the United States Constitution: See https://en.wikipedia.org/wiki/Fourteenth_Amendment_to_the_United_States_Constitution

3) REMOVAL: “28 U.S. Code § 1446—Procedure for removal of civil actions: (d) NOTICE TO ADVERSE PARTIES AND STATE COURT.—

Promptly after the filing of such notice of removal of a civil action the defendant or defendants shall give written notice thereof to all adverse parties and shall file a copy of the notice with the clerk of such State court, which shall effect the removal and the State court shall proceed no further unless and until the case is remanded.” See <https://www.law.cornell.edu/uscode/text/28/1446>

THE CONSTITUTIONAL PROVISIONS – Continued

4) REMAND: “28 U.S. Code § 1447—*Procedure after removal generally:*(c) *A motion to remand the case on the basis of any defect other than lack of subject matter jurisdiction must be made within 30 days after the filing of the notice of removal under section 1446(a). If at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded. An order remanding the case may require payment of just costs and any actual expenses, including attorney fees, incurred as a result of the removal. A certified copy of the order of remand shall be mailed by the clerk to the clerk of the State court. The State court may thereupon proceed with such case*” See. <https://www.law.cornell.edu/uscode/text/28/1447>

5) REMOVAL OF TENANT: “RCW 59.18.290(1)
Removal or exclusion of tenant from premises—Holding over or excluding landlord from premises after termination date—Attorneys’ fees.

(1) It is unlawful for the landlord to remove or exclude from the premises the tenant therefrom except under a court order so authorizing. Any tenant so removed or excluded in violation of this section may recover possession of the property or terminate the rental agreement and, in either case, may recover the actual damages sustained. The prevailing party may recover the costs of suit or arbitration and reasonable attorneys’ fees.” See <https://apps.leg.wa.gov/rcw/default.aspx?cite=59.18.290> See Page 18.

6) Tenancy by sufferance—Termination. “RCW 59.04.050: *Whenever any person obtains possession of*

THE CONSTITUTIONAL PROVISIONS – Continued

premises without the consent of the owner or other person having the right to give said possession, he or she shall be deemed a tenant by sufferance merely, and shall be liable to pay reasonable rent for the actual time he or she occupied the premises, and shall forthwith on demand surrender his or her said possession to the owner or person who had the right of possession before said entry, and all his or her right to possession of said premises shall terminate immediately upon said demand.” See <https://apps.leg.wa.gov/rcw/default.aspx?cite=59.04.050>

7) Subject Matter Jurisdiction and Supplemental Jurisdiction. 28 U.S. Code § 1367(a), *Except as provided in subsections (b) and (c) or as expressly provided otherwise by Federal statute, in any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution. Such supplemental jurisdiction shall include claims that involve the joinder or intervention of additional parties.* See <https://www.law.cornell.edu/uscode/text/28/1367>

TABLE OF AUTHORITIES

CASES:

<i>Begala v. PNC Bank</i> , 214 F.3d 776 (6th Cir. 2000).....	27
<i>Bell Atl. Corp. v. Twombly</i> , 550 U.S. 544 (2007).....	24
<i>Chicago v. New York</i> , 37 F. Supp. 150.....	19
<i>DB50 2007-1 Tr. v. Dixon</i> , 723 S.E.2d 495 (Ga. Ct. App. 2012).....	11
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PETITION FOR A WRIT OF CERTIORARI
Rule 14

Daniel G. Szmania petitions for a Writ of Certiorari to the: THE SUPREME COURT OF WASHINGTON, No. 99578-8. (**6 Above**) They Denied review on June 30, 2021.

OPINIONS BELOW Rule 14.1(d)

DANIEL G. SZMANIA, *Defendant/Petitioner*,
Vs.
WELLS FARGO BANK N.A., AS TRUSTEE FOR
BEAR STEARNS ARM TRUST 2007-3, *Plaintiff/Re-
spondent*.

Filed: February 4, 2021. Judgment date: June 30, 2021 THE SUPREME COURT OF WASHINGTON Denied Review. **Appendix 9 and Appendix 9A.** See https://dw.courts.wa.gov/index.cfm?fa=home.casesummary&casenumber=995788&searchtype=aName&crt_itl_nu=A01&filingDate=2021-03-18%2000:00:00.0&courtClassCode=A&casekey=180714270&courtnname=Supreme%20Court

The Washington State Court of Appeals Decisions are in **Appendix 4** and **Appendix 8**.

JURISDICTION Rule 14.1(e): The Washington State Supreme Court Denied review on June 30, 2021. Szmania has timely appealed (within 90 days See Rule 13-1 and 13-3), to the United States Supreme Court which has Jurisdiction under 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISIONS Rule 14.1(f):
Interpretation of the 5th and 14th Amendments and
REMOVAL found in 28 U.S. Code § 1446.

STATEMENT OF THE CASE, Rule 14.1(g)(i)

QUESTION 1: THE SUPREME COURT OF WASHINGTON, (TSCOW) abused its Discretion and Violated Szmania's Due Process by not addressing lack of Jurisdiction from Szmania's **Removal to Federal Court** evidenced in: **Appendix 3.** (See Dkt 18, No. 16-2-02606-4.) This was noted in the State Court of first instance No. 16-2-02606-4 (# 3 above) and **Appendix 6** (Motion for Damages Dkt 41), and the WA State Appellate Courts. *See Appendix 4 and Appendix 8.*

QUESTION 2: TSCOW abused its Discretion and Violated Daniel G. Szmania, Petitioner's (Szmania) Due Process by not addressing **Lack of Jurisdiction** from improper service on Szmania as ruled in: DIVISION II, COURT OF APPEALS OF THE STATE OF WASHINGTON No. 50523-1-II, Ruled on January 3, 2019 saying on page 10: "*We reversed based on Wells Fargo's improper service of process.*" *See Appendix 4.* *See <https://www.courts.wa.gov/opinions/pdf/D2%2050523-1-II%20Unpublished%20Opinion.pdf>*

Appendix 8. *See <https://www.courts.wa.gov/opinions/pdf/D2%2053743-5-II%20Unpublished%20Opinion.pdf>*

This was noted in the State Court of first instance No. 16-2-02606-4 (# 3 above, Dkt 14 Motion to Dismiss

and **Appendix 6** (Motion for Damages Dkt 41),, and the WA State Appellate Courts. *See Appendix 4, Appendix 8.*

QUESTION 3: TSCOW abused its Discretion and Violated Szmania's Due Process by not addressing **Res Judicata** against WELLS FARGO BANK N.A., AS TRUSTEE FOR BEAR STEARNS ARM TRUST 2007-3, *RESPONDENT*. (Wells).

Wells already previously litigated against the Szmania. In fact they started No. 16-2-02606-4 (# 3 above) **Appendix 3**. Filed: December 22, 2016. This is 3 days after being served by Szmania in the Ninth Circuit, *See Appendix 1*.

This was noted in the State Court of first instance No. 16-2-02606-4 (# 3 above, Dkt 14 Motion to Dismiss and **Appendix 6** (Motion for Damages Dkt 41), and the WA State Appellate Courts. *See Appendix 4, Appendix 8.*

See <https://www.courts.wa.gov/opinions/pdf/D2%2050523-1-II%20Unpublished%20Opinion.pdf>

See <https://www.courts.wa.gov/opinions/pdf/D2%2053743-5-II%20Unpublished%20Opinion.pdf>

See

1) UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT, No. 16-36055.

DANIEL G. SZMANIA, *Plaintiff-Appellant*,
Vs.

E-LOAN, INC., et al. (WELLS FARGO BANK, N.A.),
Defendants-Appellees.

Filed: December 19, 2016. Notice of Appeal Dkt 67)

Judgment date: July 11, 2018 (Mandate Dkt 80)

Appendix 1. Szmania timely appeals. *See* <http://cdn.ca9.uscourts.gov/datastore/memoranda/2018/02/23/16-36055.pdf>

2) IN THE SUPREME COURT OF THE UNITED STATES, No. 18-734.

DANIEL G. SZMANIA, *PETITIONER,*

Vs.

E-LOAN, INC.; et al. (Wells Fargo Bank, N.A.) *RESPONDENT(s).*

Filed: September 27, 2018.

Judgment date: (Writ of Certiorari Denied Dkt 82) February 19, 2019. (*Res Judicata case.*) **Appendix 2.** *See* <https://www.supremecourt.gov/search.aspx?filename=/docket/docketfiles/html/public/18-734.html>

QUESTION 4: TSCOW abused its Discretion and Violated Szmania's **Due Process especially Procedural Due Process of the Fifth and Fourteenth Amendments to the United States Constitution**
Violated by:

- a) Not enforce, did not recognize and ignored the civil court case Removal to Federal Court under 28 U.S.C. § 1446(d)?
See Appendix 3. (*See* Dkt 18, No. 16-2-02606-4.)

- b) Not enforce, did not recognize and ignored the Lack of Personal Jurisdiction over Szmania due to Lack of Service of Process by Wells when the Washington State Appellate Court Division II, No. 50523-1-II, Ruled as such on January 3, 2019 saying on page 10: "*We reversed based on Wells Fargo's improper service of process.*" **See Appendix 4.**
- c) Not enforce, did not recognize and did ignore the Res Judicata Doctrine that prohibits Wells from starting a new law suit against Szmania after a previous case was appealed by Szmania to THE SUPREME COURT of the UNITED STATES, No. 18-734, which the Petition was Denied Review on February 19, 2019. Did TSCOW act within the administration of justice or was their actions an arbitrary denial of Szmania's property; his home? And was their inactions of not applying Res Judicata to the case, was this a Violation of the Equal Protection Clause of the Fourteenth Amendments to the United States Constitution and within the administration of justice or was their actions an arbitrary denial of Szmania's property; his home? **See Appendix 1, Appendix 2 and Appendix 3.**

ARGUMENT & REASON FOR GRANTING WRIT

Rule 14.1(h) and *See* Rule 10(b)(c).

Regarding QUESTION 1: REMOVAL

3) IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR CLARK COUNTY, No. 16-2-02606-4.

WELLS FARGO BANK, N.A., AS TRUSTEE FOR BEAR STEARNS ARM TRUST 2007-3, *Plaintiff*,

Vs.

DANIEL G. SZMANIA, *Defendant*.

Filed: December 22, 2016.

Szmania REMOVED TO FEDERAL DISTRICT COURT on May 18, 2017. *See* Dkt 18, **Appendix 3**.

Judgment date: (June 23, 2017 Dkt 25, Szmania timely Appeals to: DIVISION II, COURT OF APPEALS OF THE STATE OF WASHINGTON, No. 50523-1-II.) Because the State Court proceeded anyway! *See* <https://odysseyportal.courts.wa.gov/ODYPORTAL/Home/WorkspaceMode?p=0>

On February 26, 2017 Szmania Files his Motion to Dismiss, Dkt 14 in the above noted case #3 Court. First hearing date was April 28, 2017. The Court did NOT rule and reset hearing until May 26, 2017. No Orders filed!

On May 18, 2017 Szmania files Notice of Removal to Federal Court, Dkt 18. *See Appendix 3*. (Proper Service on Szmania was lacking.)

On May 26, 2017 the case 3 Court proceeds anyway even though it says on the record it sees a Removal! The Court in the Instant State Case on Appeal acknowledges seeing the Notice of Removal: *“And I have seen from both parties a notice of removal, . . .”* See **Appendix 10**. See RP Volume I, Page 25 at 15 to 16. (Page 8 Szmania’s Opening Brief December 11, 2017). See **Appendix 4**.

Case 3 Court enters the following Orders & Writ:

- 1) FINDINGS AND ORDER TO PROCEED, NOTWITHSTANDING DEFENDANT'S NOTICE TO CLERK OF REMOVAL TO FEDERAL COURT, May 26, 2017, CP 20.
- 2) ORDER DENYING DEFENDANT'S MOTION TO DISMISS, AND SETTING TIME FOR HEARING, May 26, 2017, CP 21.
- 3) ORDER FOR DEFAULT AND DEFAULT JUDGMENT, May 26, 2017, CP 22.
- 4) ORDER TO ISSUE WRIT OF RESTITUTION WITHOUT BOND, May 26, 2017, CP 23. And WRIT OF RESTITUTION May 26, 2017, CP 24.

*“The above abuse of power by The Honorable Bernard F. Veljacic is **NOT a matter of judicial discretion!** It is in clear violation of the well settled law in 28 U.S.C. § 1446(d) it reads: **“(d) NOTICE TO ADVERSE PARTIES AND STATE COURT:** Promptly after the filing of such notice of removal of a civil action the defendant or defendants shall give written notice thereof to all adverse parties and shall file a copy of the*

notice with the clerk of such State Court, which shall effect the removal and the State Court shall proceed no further unless and until the case is remanded.” (Emphases added!) (P. 31-21 Szmania Brief 12/11/2017)

Controlling Law:

28 U.S.C. § 1446(d) reads: “**(d) NOTICE TO ADVERSE PARTIES AND STATE COURT.** – *Promptly after the filing of such notice of removal of a civil action the defendant or defendants shall give written notice thereof to all adverse parties and shall file a copy of the notice with the clerk of such State Court, which shall effect the removal and the State Court shall proceed no further unless and until the case is remanded.*” (Emphases added!) See CP 14, page 5 at 22-25.

See <https://www.law.cornell.edu/uscode/text/28/1446>

The TSCOW and its Appellate and Superior Courts (Courts) have greatly departed from the accepted and usual course of judicial proceedings and have sanctioned a great departure by the lower Superior Court when it Ruled the above noted Orders and Writ on page 8, ***after the Removal to Federal Court by Szmania!*** See Appendix 3.

The case on appeal was never Remanded within the law:

28 U.S.C. § 1447(c) reads: ***Procedure after removal generally (REMAND) (c) A***

motion to remand the case on the basis of any defect other than lack of subject matter jurisdiction must be made within 30 days after the filing of the notice of removal under section 1446(a). If at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded. An order remanding the case may require payment of just costs and any actual expenses, including attorney fees, incurred as a result of the removal. A certified copy of the order of remand shall be mailed by the clerk to the clerk of the State court. The State court may thereupon proceed with such case. (Emphases added!)

See <https://www.law.cornell.edu/uscode/text/28/1447>

The case has NEVER been Remanded! “*This case has not been remanded.*” **Appendix 10.** See RP Volume I, page 42 at 2-23 and page 10 at 10. (See Page 9 Szmania’s Brief 12/11/2017, No. 50523-1-II).

TSCOW and its Courts abused its Discretion and Violated Szmania’s Due Process by not addressing lack of Jurisdiction from Szmania’s Removal to Federal Court evidenced in: **Appendix 3.** (See Dkt 18, No. 16-2-02606-4.) This was noted in the State Court of first instance No. 16-2-02606-4 (# 3 above) and **Appendix 6** (Motion for Damages Dkt 41), and the WA State Appellate Courts. See **Appendix 4 and Appendix 8.**

The arrogance and lack of respect for the law the Washington State Courts show in their actions is outright unconstitutional and is a disgrace to the

constitution, the law and their oaths to uphold the constitution! This grave injustice calls for this Court to exercise its Supervisory Power in Rule 10(b)(c) and Reverse all the Order and Writs on page 8.

*“A court with **NO Jurisdiction** can only act in one way! That is to dismiss under CR 12(h)(3) Lack of Jurisdiction. **Period!**”*

*“Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, **the court shall dismiss the action.**” (Emphases add!) (See Page 11 Szmania’s Brief 12/11/2017, No. 50523-1-II).*

Other issues: “State courts do not adjudicate whether an action could be properly removed. Once a defendant has filed a notice to remove a case, jurisdiction is transferred automatically and immediately by operation of law from the state court to the federal court. Any objection to removal must be presented to the federal court. If a federal court finds that the notice of removal was in fact defective, or that the federal court does not have jurisdiction, the case is remanded to the state court.” (Emphases added!)

See https://en.wikipedia.org/wiki/Removal_jurisdiction

(See Page 21 Szmania’s Brief 12/11/2017, No. 50523-1-II).

*“This is the law in 28 U.S.C. § 1446(d) **NOTICE TO ADVERSE PARTIES AND STATE COURT.** – “**and the State Court shall proceed no further unless and until the case is***

remanded.” And 28 U.S. Code § 1447(c) Procedure after removal generally reads: “must be made within 30 days.” (See Page 22 Szmania’s Brief 12/11/2017, No. 50523-1-II).

“A Federal Removal divests the State Court jurisdiction and places it in the hand of the Federal District Court judge. Removal is merely exercising ones legal rights to the fullest extent possible under the law.” (Emphases added!)

See <https://www.linkedin.com/pulse/evictions-federal-court-david-s-schonfeld>

(See Page 23 Szmania’s Brief 12/11/2017, No. 50523-1-II).

“Hence, after removal, the jurisdiction of the state court absolutely ceases and the state court has a duty not to proceed any further in the case. Any subsequent proceedings in state court on the case are void ab initio.” Maseda v. Honda Motor Co., Ltd., 861 F.2d 1248, 1254-55 (11th Cir. 1988) (internal citation omitted); see DB50 2007-1 Tr. v. Dixon, 723 S.E.2d 495, 496 (Ga. Ct. App. 2012) (“[A]ny proceedings in a state court after removal of a case to federal court are null and void and must be vacated.” (citation omitted)). (Emphases added!) See https://www.mcglinchey.com/files/uploads/Real_Property_Newsletters/2016/01/Case-Wargo-v-Wells-Fargo.pdf Page 4.

(See Page 23 Szmania’s Brief 12/11/2017, No. 50523-1-II).

“Since no Remand is contained in the record on appeal, subject matter jurisdiction was never restored to the Instant State Case on Appeal and no Venue exists with no jurisdiction! This is well-settled law!” Emphasized in original) (See Page 24 Szmania’s Brief 12/11/2017, No. 50523-1-II).

“Wells never motioned for a Remand in Case No. 16-2-02606-4 which is the Instant State Case on Appeal. Wells failure to object and motion to Remand is a **waiver to their right to remand now under 28 U.S. Code § 1447(c)**”. See Page 24 Szmania’s Brief 12/11/2017, No. 50523-1-II).

“when an application to remove a cause (removable) is made in proper form, and no objection is made . . . **it is the duty of the State court to “proceed no further in the cause.””**”

Virginia v. Rives, 100 U.S. 313 (1879) (Emphasized added!)

“**the filing of a removal petition terminates the state court’s jurisdiction until the case is remanded, even in a case improperly removed.**” *Lowe v. Jacobs, 243 F.2d 432, 433 (5th Cir.), cert. denied, 355 U.S. 842, 78 S.Ct. 65, 2 L.Ed. 52 (1957).* (Emphasized added!)

“**BILBREY, J., concurring. I agree with Judge Benton’s thorough legal analysis that as 28 U.S.C. § 1446 is currently written, a state court lacks subject matter jurisdiction after a notice of removal is filed, even**

if the removal is improper. See Maseda v. Honda Motor Co., Ltd., 861 F.2d 1248 (11th Cir. 1988). See https://www.mcglinchey.com/files/uploads/Real_Property_Newsletters/2016/01/Case-Wargo-v-Wells-Fargo.pdf Page 20. (Emphases added!)

*“If one court acquires jurisdiction over property first, no other court may take jurisdiction for common sense reasons.” Sexton v. NDEX West, et al., U.S. Court of Appeals for the Ninth Circuit, Case No. 11-17432, D.C. No. 3:11-cv-00440-LRH-VPC (2013) (Emphases added!) **

“The law provides that once State and Federal Jurisdiction has been challenged, it must be proven.” Main v. Thiboutot, 100 S.Ct. 2502 (1980). (Emphases added!) See Page 25-26 Szmania’s Brief 12/11/2017, No. 50523-1-II).*

Wells never motioned to Remand the case, so they waived their right to latter arguments on this issue based on well settled law.

“[W]aiver is an equitable doctrine, and ‘we apply waiver only where it is equitable under the circumstances and where it serves the goals of the act.’” Klem v. Wash. Mut. Bank, 176 Wn.2d 771, 783 n. 7, 295 P.3d 1179, 1185 (2013) (quoting Albice v. Premier Mortg. Servs. of Wash., Inc., 174 Wn.2d 560, 569, 276 P.3d 1277 (2012)).

“A departure by a court from those recognized and established requirements of law,

however close apparent adherence to mere form in method of procedure, which has the effect of depriving one of a constitutional right, is an excess of jurisdiction.” Wuest v. Wuest, 127 P.2d 934, 937.

“Where a court failed to observe safeguards, it amounts to denial of due process of law, court is deprived of juris.” Merritt v. Hunter, C.A. Kansas, 170 F.2d 739.

MR. SZMANIA: *I just want to clarify, because 28 USC 1446 subsection (d) clearly says that once a notice is filed with the clerk of the court, which shall affect the removal, and the state court shall proceed no further unless and until the case is remanded. In my humble opinion, from my view, you're proceeding in the case by entering an order. So do you have an authority that overrides 28 USC 1446 subsection (d)?* **THE COURT:** *I haven't heard a question so I'm not going to respond. And moreover, I'm typically not the one to respond to questions.* See RP Volume I, Page 28 at 14 to 24. **The case has NEVER been Remanded thus Jurisdiction is in the Federal Court!** See RP Volume I, page 10 at 10. *“This case has not been remanded.” Appendix 10. See Page 38 Szmania's Brief 12/11/2017, No. 50523-1-II).*

ARGUMENT & REASON FOR GRANTING WRIT,
Rule 14.1(h) and *See* Rule 10(b)(c).

Regarding QUESTION 2: LACK OF JURISDICTION

3) IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR CLARK COUNTY, No. 16-2-02606-4.

WELLS FARGO BANK, N.A., AS TRUSTEE FOR BEAR STEARNS ARM TRUST 2007-3,
Plaintiff,

Vs.

DANIEL G. SZMANIA, *Defendant.*

Filed: December 22, 2016.

Szmania REMOVED TO FEDERAL DISTRICT COURT on May 18, 2017. *See* Dkt 18, **Appendix 3.**

Judgment date: (June 23, 2017 Dkt 25, Szmania timely Appeals to: DIVISION II, COURT OF APPEALS OF THE STATE OF WASHINGTON, No. 50523-1-II.) Because the State Court proceeded anyway! *See* <https://odysseyportal.courts.wa.gov/ODYPORTAL/Home/WorkspaceMode?p=0>

The Court in #3 Violated Daniel G. Szmania, Petitioner's (Szmania) Due Process by not addressing **Lack of Jurisdiction** on 5/26/2017 Briefed in Szmania' Motion to Dismiss Dkt 14, from improper service on Szmania as latter ruled in: DIVISION II, COURT OF APPEALS OF THE STATE OF WASHINGTON No. 50523-1-II, Ruled on January 3, 2019 saying on page 10:

“We reversed based on Wells Fargo’s improper service of process.” See Appendix 4. See January 3, 2019 See Decision at:

Page 1, “Because Wells Fargo failed to comply with the alternative service statute and the trial court’s order for alternative service, we reverse.” (Emphases added!)

Page 4, “We agree that Wells Fargo failed to comply with the alternative service statute, and the superior court’s order based on that statute, by failing to mail a copy of the summons and complaint by certified mail.” And “Scanlan v. Townsend, 181 Wn.2d 838, 847, 336 P.3d 1155 (2014). Proper service of the summons and complaint is essential to invoke personal jurisdiction over the defendant. Id.” (Emphases added!)

Page 5, “As a result, we reverse the superior court’s denial of Szmania’s motion to dismiss.” (Emphases added!)

Page 10, “We reversed based on Wells Fargo’s improper service of process.” (Emphases added!)

See <https://www.courts.wa.gov/opinions/pdf/D2%2050523-1-II%20Unpublished%20Opinion.pdf>

See Mandate February 14, 2019, Appendix 5. On June 13, 2019 Case Remands on Szmania’s Motion for

Possession and Damages, Dkt 41. (Dkt 39-Dkt 48 supporting documents.) **Appendix 6.**

We See in Scanlan: ***Proper service of the summons and complaint is essential to invoke personal jurisdiction over the defendant. (Emphases added!)***

Before the Remand and especially after the Remand with Division II rulings, Court 3 acting without Personal Jurisdiction over Szmania!

And Page 5 "***As a result, we reverse the superior court's denial of Szmania's motion to dismiss.***" (Emphases added!)

Court 3 should have Ordered Szmania' Motion to Dismiss and reversed these Orders and Writs:

- 1) FINDINGS AND ORDER TO PROCEED, NOTWITHSTANDING DEFENDANT'S NOTICE TO CLERK OF REMOVAL TO FEDERAL COURT, May 26, 2017, CP 20.
- 2) ORDER DENYING DEFENDANT'S MOTION TO DISMISS, AND SETTING TIME FOR HEARING, May 26, 2017, CP 21.
- 3) ORDER FOR DEFAULT AND DEFAULT JUDGMENT, May 26, 2017, CP 22.
- 4) ORDER TO ISSUE WRIT OF RESTITUTION WITHOUT BOND, May 26, 2017, CP 23. And WRIT OF RESTITUTION May 26, 2017, CP 24.

Than Court 3 should have Granted Szmania's Motion for Damages and Possession, Dkt 41. *See Appendix 6.*

Wells states: "*this Court has jurisdiction*" (Complaint CP 3, page 2 at line 12) when they know the U.S. Court of Appeals for the Ninth Circuit Case No. 16-36055 as of 12/20/16, has jurisdiction. *See CP 13 Ex A.* This claim makes their pleadings insufficiency of process! *See CP 14, Page 16, 4-8. See Page 26 Szmania's Brief 12/11/2017, No. 50523-1-II.*

“Once jurisdiction is challenged, the court cannot proceed when it clearly appears that the court lacks jurisdiction, the court has no authority to reach merits, but, rather, should dismiss the action.” Melo v. U.S., 505 F.2d 1026 (8th Cir. 1974) (Emphases added!)

“When it clearly appears that the court lacks jurisdiction, the court has no authority to reach the merits. In such a situation the action should be dismissed for want of jurisdiction.” Melo v. U.S., 505 F.2d 1026 (8th Cir. 1974)

In the Melo court, we see the same standard of law upheld as CR 12(h)(3) Lack of Jurisdiction, prescribes:

“Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action.” (Emphases added!) See https://www.courts.wa.gov/court_rules/pdf/CR/SUP CR 12 00 00.pdf

“A court cannot confer jurisdiction where none existed and cannot make a void proceeding valid. It is clear and well established law that a void order can be challenged in any court”. Old Wayne Mut. L. Assoc. v. McDonough, 204 U.S. 8, 27 S.Ct. 236 (1907).

“There is no discretion to ignore lack of jurisdiction.” Joyce v. U.S., 474 F.2d 215

“A judgment rendered by a court without personal jurisdiction over the defendant is void. It is a nullity. [A judgment shown to be void for lack of personal service on the defendant is a nullity.]” Sramek v. Sramek, 17 Kan. App. 2d 573, 576-77, 840 P.2d 553 (1992), rev. denied, 252 Kan. 1093 (1993). (Emphases added!)

“Court must prove on the record, all jurisdiction facts related to the jurisdiction asserted.” Latana v. Hopper, 102 F.2d 188; Chicago v. New York, 37 F. Supp. 150.

Court 3 clearly Violated Szmania’s Due Process by for Lack of Service of Process as ruled by DIVISION II, COURT OF APPEALS OF THE STATE OF WASHINGTON No. 50523-1-II, Ruled on January 3, 2019. **Appendix 4.** And in their subsequent ruling: DIVISION II, COURT OF APPEALS OF THE STATE OF WASHINGTON, No. 53743-5-II, Judgment date: January 5, 2021. **Appendix 8.**

“A universal principle as old as the law is that proceedings of a court without jurisdiction are a nullity and its judgment therein without

effect either on person or property." *Norwood v. Renfield*, 34 C 329; *Ex parte Giambonini*, 49 P. 732. (Emphases added!)

"Jurisdiction is fundamental and a judgment rendered by a court that does not have jurisdiction to hear is void ab initio." *In Re Application of Wyatt*, 300 P. 132; *In Re Cavitt*, 118 P.2d 846. (Emphases added!)

"The burden shifts to the court to prove jurisdiction." *Rosemond v. Lambert*, 469 F.2d 416. (Emphases added!)

"Thus, where a judicial tribunal has no jurisdiction of the subject matter on which it assumes to act, its proceedings are absolutely void in the fullest sense of the term." *Dillon v. Dillon*, 187 P. 27. (Emphases added!)

REMOVAL OF TENANT: "RCW 59.18.290(1) *It is unlawful for the landlord to remove or exclude from the premises the tenant thereof except under a court order so authorizing.* With improper Service on Szmania, the Order to remove Szmania from his home is invalid! (Emphases added!)

ARGUMENT & REASON FOR GRANTING WRIT,
Rule 14.1(h) and *See* Rule 10(b)(c).

Regarding QUESTION 3: RES JUDICATA

**3) IN THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR CLARK
COUNTY, No. 16-2-02606-4.**

WELLS FARGO BANK, N.A., AS TRUSTEE
FOR BEAR STEARNS ARM TRUST 2007-3,
Plaintiff,

Vs.

DANIEL G. SZMANIA, *Defendant*.

Filed: December 22, 2016.

Szmania REMOVED TO FEDERAL DISTRICT COURT on May 18, 2017. *See* Dkt 18,
Appendix 3.

Judgment date: (June 23, 2017 Dkt 25,
Szmania timely Appeals to: DIVISION II,
COURT OF APPEALS OF THE STATE OF
WASHINGTON, No. 50523-1-II.) Because the
State Court proceeded anyway! *See* <https://odysseyportal.courts.wa.gov/ODYPORTAL/Home/WorkspaceMode?p=0>

The Court in #3 Violated Daniel G. Szmania, Petitioner's (Szmania) Due Process by not addressing **Res Judicata** on 5/26/2017 Briefed in Szmania' Motion to Dismiss Dkt 14, from the prior litigation found in:

**0) UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA, No. 3:16-cv-5644**

DANIEL G. SZMANIA, Plaintiff,
Vs.

E-LOAN, INC., BEAR STEARNS ARM TRUST,
MORTGAGE PASS-THROUGH CERTIFI-
CATES, SERIES 2007-3, BENJAMIN D.
PETIPRIN, **WELLS FARGO, N.A.**, and
JOHN G. STUMPF, Defendants.

Filed: July 20, 2016 Dkt 1 Removed by Wells.
Judgment date: November 21, 2016, Dkt 65.

Appendix 0.

**1) UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT, No. 16-36055.**

DANIEL G. SZMANIA, *Plaintiff-Appellant*,
Vs.

E-LOAN, INC., et al. (WELLS FARGO BANK,
N.A.), *Defendants-Appellees*.

Filed: December 19, 2016. Notice of Appeal
Dkt 67)

Judgment date: July 11, 2018 (Mandate Dkt
80)

Appendix 1. Szmania timely appeals. See
<http://cdn.ca9.uscourts.gov/datastore/memoranda/2018/02/23/16-36055.pdf>

**2) IN THE SUPREME COURT OF THE
UNITED STATES, No. 18-734.**

DANIEL G. SZMANIA, *PETITIONER*,
Vs.

E-LOAN, INC.; et al. (Wells Fargo Bank, N.A.)
RESPONDENT(s).

Filed: September 27, 2018.

Judgment date: (Writ of Certiorari Denied Dkt 82) February 19, 2019. (*Res Judicata case.*) **Appendix 2.**

See <https://www.supremecourt.gov/search.aspx?filename=/docket/docketfiles/html/public/18-734.html>

Furthermore: Washington State Appellate Court DIVISION II, COURT OF APPEALS OF THE STATE OF WASHINGTON No. 50523-1-II, Ruled on January 3, 2019. **Appendix 4.** And in their subsequent ruling: DIVISION II, COURT OF APPEALS OF THE STATE OF WASHINGTON, No. 53743-5-II, Judgment date: January 5, 2021. **Appendix 8.** Both ignored Res Judicata as well!

Court #3 case was filed by Wells on:

No. 16-2-02606-4.

WELLS FARGO BANK, N.A., AS TRUSTEE FOR BEAR STEARNS ARM TRUST 2007-3,
Plaintiff,

Vs.

DANIEL G. SZMANIA, *Defendant.*

Filed: December 22, 2016.

This is three (3) days after Szmania filed:

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT, No. 16-36055.

DANIEL G. SZMANIA, *Plaintif-Appellant,*
Vs.

E-LOAN, INC., et al. (WELLS FARGO BANK, N.A.), *Defendants-Appellees.*

Filed: December 19, 2016. Judgment date: July 11, 2018 (Mandate Dkt 80) **Appendix 1**. The Abstention doctrine should have been applied by the State Court and the Ninth. See DktEntry 17-1, 17-2 and DktEntry 21.

*“Well’s claims are further Barred by doctrines of Res Judicata & Collateral Estoppel (claim and issue preclusion). The U.S. District Court Western District of Washington At Tacoma, Case No. 3:16-CV-05644-RBL, ruled on 11/18/16: “**This is not a foreclosure case.**” Dkt 64 page 2 at 14. Therefore Plaintiff cannot seek relief based upon their illegal foreclosure action in which they **never got a Declaratory ruling saying they had legal standing** to collect or foreclose on Szmania’s home. See CP 3. Plaintiff’s Complaint does not meet the Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007) standard.” See Page 28 Szmania’s Brief 12/11/2017, No. 50523-1-II). Szmania timely appealed to the Ninth Circuit as noted above.*

“But the 4 prongs for Res Judicata apply here. To determine whether res judicata applies, Washington courts apply a four-part test. Karlberg, 280 P.3d at 1130. In all instances, res judicata applies only if there is a final judgment on the merits. Id. (citing Pederson v. Potter, 103 Wn. App. 62, 11 P.3d 833, 835 (2000).) Assuming there is, that judgment will have preclusive effect only if there is identity between the prior judgment and the subsequent action with respect to (1) persons and parties; (2) causes of action; (3) subject matter; and (4) the quality of persons for or against whom the claim was made. Id. Plead on page 18(d), the parties, cause of

action, subject matter and the quality of persons claims were made against, all meet the above standards. Res Judicata occurs when a prior judgment has a concurrence of identity in four respects with a subsequent action. In short; Well's claims in the Instant State Case on Appeal are Barred by Res Judicata." See Pages 28-29 Szmania's Brief 12/11/2017, No. 50523-1-II).

"no court - state or federal - is free to revisit as a matter of res judicata". See generally *Farm Credit Bank of St. Paul v. Ziebarth*, 485 N.W.2d 788, 791 (N.D. 1992). (Emphases added!)

Here we meet the five (5) standards in *Karlberg* for Res Judicata. **Judgments:**

(a) The U.S. District Court Western District of Washington At Tacoma, Case No. 3:16-CV-05644-RBL. Judgment date: November 21, 2016, Dkt 65. **Appendix 0.**

(b) UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT, No. 16-36055., Judgment date: July 11, 2018 (Mandate Dkt 80) **Appendix 1.**

1) **Persons and parties:** in all cases it is Wells and Szmania.

(2) **Causes of action:** in all cases the cause has been ownership, possession or contract of Szmania' home. Known as: 17005 NE 164th Avenue Brush Prairie, WA 98606.

(3) **Subject matter:** In each case the subject matter was Szmania's first mortgage loan note and all

its issues and if it was paid off. So the claim is based on the same transaction that was at issue in the first action.

(4) The quality of persons for or against whom the claim was made: In each noted case it was Szmania and Wells appearing.

All of the elements are plainly present here to Res Judicata: Judgment and four (4) prongs in *Karlberg*. Thus Wells should have made all their the claims in a prior case.

Based on Wells claims being barred by Res Judicata, the following Orders and Writs should be reversed:

- 1) FINDINGS AND ORDER TO PROCEED, NOTWITHSTANDING DEFENDANT'S NOTICE TO CLERK OF REMOVAL TO FEDERAL COURT, May 26, 2017, CP 20.
- 2) ORDER DENYING DEFENDANT'S MOTION TO DISMISS, AND SETTING TIME FOR HEARING, May 26, 2017, CP 21.
- 3) ORDER FOR DEFAULT AND DEFAULT JUDGMENT, May 26, 2017, CP 22.
- 4) ORDER TO ISSUE WRIT OF RESTITUTION WITHOUT BOND, May 26, 2017, CP 23. And WRIT OF RESTITUTION May 26, 2017, CP 24.

Than Court #3 should have Granted Szmania's Motion to Dismiss, Dkt 14 and Szmania's Motion for

Damages and Possession, Dkt 41. *See Appendix 4 and Appendix 6.* Issues of the Szmania's Loan, ownership, and contracts on the first loan have already been litigated and res judicata precludes Wells from another bite at the forbidden apple.

"The U.S. District Court Western District of Washington At Tacoma, Case No. 3:16-CV-05644-RBL, ruled on 11/18/16: "This is not a foreclosure case." Dkt 64 page 2 at 14. Therefore Plaintiff cannot seek relief based upon their illegal foreclosure action in which they never got a Declaratory ruling saying they had legal standing to collect or foreclose on Szmania's home."

"Defense of lack of jurisdiction over the subject matter may be raised at any time, even on appeal." Hill Top Developers v. Holiday Pines Service Corp., 478 So. 2d 368 (Fla. 2nd DCA 1985)

"Dismissals based on res judicata have been affirmed where the defense was raised by way of a 12(b)(6) motion. See, e.g., Begala v. PNC Bank, 214 F.3d 776 (6th Cir. 2000) (affirming 12(b)(6) dismissal on basis of res judicata); Kane v. Magna Mixer Co., 71 F.3d 555 (6th Cir. 1995) (same)." See Page 30 Szmania's Brief 12/11/2017, No. 50523-1-II).

Also, being that Jurisdiction is still in the Jurisdiction of the Federal Case, on appeal in the Ninth Circuit when Wells started Case #3, also further employs the doctrines of claim and issue preclusion, Res Judicata and Collateral Estoppels.

“[w]hen an appeal is pending, a party is precluded by res judicata from starting a new action . . . in hopes of obtaining a contrary result while the appeal is pending.” Spokane Cnty. v. Miotke, 158 Wn. App. 62, 67, 240 P.3d 811 (2010) (internal quotation marks omitted).

ARGUMENT & REASON FOR GRANTING WRIT,

Rule 14.1(h) and *See* Rule 10(b)(c).

Regarding QUESTION 4: VIOLATION OF DUE PROCESS ESPECIALLY PROCEDURAL DUE PROCESS OF THE FIFTH AND FOURTEENTH AMENDMENTS FO THE UNITED STATES CONSTITUTION

Szmania's Due Process was Denied in all three (3) instances regarding each above listed Questions and argument presented to this Court:

QUESTION 1: REMOVAL.

QUESTION 2: LACK OF JURISDICTION,

QUESTION 3: RES JUDICATA.

Each situation the Court #3 was required to STOP all proceedings! It blatantly and illegally chooses to proceed! All the Orders and Writs should be reversed listed on Page 24. Court #3 and the Washington State Appellate Courts clearly violated Szmania's Due Process and discriminated against him being a Disabled Veteran and a Pro Se litigant which is unconscionable!

CONCLUSION Rule 14.1(h)

As pleaded above and for the foregoing reasons:

QUESTION 1: REMOVAL: The well settled law of *Lack of Jurisdiction after Removal* found in 28 U.S.C. § 1446(d) that terminates the Jurisdiction in the State Court once Removal is filed.

QUESTION 2: LACK OF JURISDICTION:

DIVISION II, COURT OF APPEALS OF THE STATE OF WASHINGTON No. 50523-1-II.

DANIEL G. SZMANIA, *Defendant/Appellant*,
Vs.

WELLS FARGO BANK N.A., AS.
TRUSTEE FOR BEAR STEARNS ARM
TRUST 2007-3, *Plaintiff/Respondent*.

Judgment date: January 3, 2019. Division II rules, reverses in Szmania's (Szmania) favor that Wells Fargo never properly personally Served Szmania. **Appendix 4.**

See <https://www.courts.wa.gov/opinions/pdf/D2%2050523-1-II%20Unpublished%20Opinion.pdf>

See January 3, 2019 See Decision at:

Page 1, “Because Wells Fargo failed to comply with the alternative service statute and the trial court’s order for alternative service, we reverse.”
(Emphases added!)

Page 4, “We agree that Wells Fargo failed to comply with the alternative service statute, and the superior court’s order based on that statute,

by failing to mail a copy of the summons and complaint by certified mail.” And “*Scanlan v. Townsend, 181 Wn.2d 838, 847, 336 P.3d 1155 (2014). Proper service of the summons and complaint is essential to invoke personal jurisdiction over the defendant. Id.*” (Emphases added!)

Page 5, “As a result, we reverse the superior court’s denial of Szmania’s motion to dismiss.” (Emphases added!)

Page 10, “We reversed based on Wells Fargo’s improper service of process.” (Emphases added!)

QUESTION 3: RES JUDICATA:

This case prohibits Wells from pleading new claims in a new case by the Res Judicata doctrine:

0) UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA, No. 3:16-cv-5644

DANIEL G. SZMANIA, Plaintiff,
Vs.

E-LOAN, INC., BEAR STEARNS ARM
TRUST, MORTGAGE PASS-THROUGH
CERTIFICATES, SERIES 2007-3, BENJA-
MIN D. PETIPRIN, **WELLS FARGO, N.A.**,
and JOHN G. STUMPF, Defendants.

Filed: July 20, 2016 Dkt 1 Removed by Wells.
Judgment date: November 21, 2016, Dkt 65.
Appendix 0.

This new case Wells is Barred by Res Judicata from the above noted case:

3) IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR CLARK COUNTY, No. 16-2-02606-4.

WELLS FARGO BANK, N.A., AS TRUSTEE FOR BEAR STEARNS ARM TRUST 2007-3, *Plaintiff*,

Vs.

DANIEL G. SZMANIA, *Defendant*.

Filed: December 22, 2016. (3 days after start of Ninth Circuit Case Appeal! #1 = Res Judicata!)

Szmania REMOVED TO FEDERAL DISTRICT COURT on May 18, 2017. See Dkt 18, Appendix 3.

Judgment date: (June 23, 2017 Dkt 25, Szmania timely Appeals to: DIVISION II, COURT OF APPEALS OF THE STATE OF WASHINGTON, No. 50523-1-II.) Because the State Court proceeded anyway! *See* <https://odysseyportal.courts.wa.gov/ODYPORTAL/Home/WorkspaceMode?p=0>

QUESTION 4: VIOLATION OF DUE PROCESS:

The record on appeal clearly shows Szmania's Due Process was ignored and abused by Court #3 and the Washington State Appellate Courts. For these reasons the following need to be Reversed in Court #3 No. 16-2-02606-4:

- 1) FINDINGS AND ORDER TO PROCEED, NOTWITHSTANDING DEFENDANT'S NOTICE TO CLERK OF REMOVAL TO FEDERAL COURT, May 26, 2017, CP 20.
- 2) ORDER DENYING DEFENDANT'S MOTION TO DISMISS, AND SETTING TIME FOR HEARING, May 26, 2017, CP 21.
- 3) ORDER FOR DEFAULT AND DEFAULT JUDGMENT, May 26, 2017, CP 22.
- 4) ORDER TO ISSUE WRIT OF RESTITUTION WITHOUT BOND, May 26, 2017, CP 23. And WRIT OF RESTITUTION May 26, 2017, CP 24.
- 5) That Court #3 should also be Ordered to Grant: Szmania's Motion to Dismiss, Dkt 14 and Szmania's Motion for Damages and Possession, Dkt 41. *See Appendix 6.*

Szmania also asks for possession of his home and the property that he was illegally evicted from known as: 17005 NE 164th Ave, Brush Prairie, WA 98606.

Szmania also asked under Rule 43 that no attorney fees or cost be awarded to Wells. That cost, and DOUBLE COST, fees and time of value be awarded Szmania for prosecution of this appeal payable by Wells per Rule 43.7 since the abuse was extraordinary circumstances in this case. Szmania is also available for oral arguments and request oral arguments.

"Equal Justice Under Law" And; for the foregoing reasons, this Court should grant the Petition for Writ of Certiorari and the full relief requested by Szmania.

Compliance with Rule 33, 1(h)(g)(i) Word Limits and cover colors for booklet-format documents are as follows: Type of Document (i) Petition for a Writ of Certiorari 9,000 word limit. This Writ of Certiorari has 6,001 words in body of Writ from Page 1 to Page 31.

Respectfully submitted,

Presented by:

/s/ Daniel G. Szmania September 23, 2021

DANIEL G. SZMANIA, PRO SE, **PETITIONER**,

Presented: DANIEL G. SZMANIA, Defendant/Appellant,
Pro Se.

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