S258019

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

KWANG K. SHEEN,

Plaintiff and Appellant,

v.

WELLS FARGO BANK, N.A., et al.

Defendant and Respondent.

After a Decision by the Court of Appeal
Second Appellate District, Division Eight, Case No. B289003
Superior Court of California, Los Angeles County
Case No. BC631510
The Honorable Judge Robert L. Hess

APPLICATION OF CONSUMER ATTORNEYS OF CALIFORNIA FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF IN SUPPORT OF PLAINTIFF; AND BRIEF

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CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

Pursuant to Cal. Rules of Ct., rule 8.208, the Consumer Attorneys of California certifies that it is a non-profit organization with no shareholders. CAOC and its counsel certify that they know of no other entity or person that has a financial or other interest in the outcome of the proceeding that CAOC and its counsel reasonably believe the Justices of this Court should consider in determining whether to disqualify themselves under Canon 3E of the Code of Judicial Ethics.

Dated: Sept. 18, 2020

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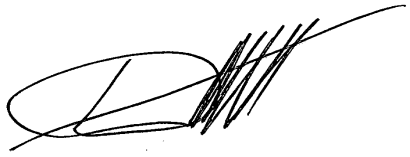

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APPLICATION FOR PERMISSION TO FILE

Amicus curiae Consumer Attorneys of California (CAOC) seeks permission to file the accompanying brief as a friend of the Court. (Cal. Rules of Court, rule 8.520 subd. (f)(1).)

Founded in 1962, CAOC is a voluntary non-profit membership organization representing over 6,000 consumer attorneys practicing in California. CAOC's members represent individuals and small businesses in various types of cases, including class actions and individual matters affecting individuals and entities for personal injuries, property damage, and other issues such as those in this action. CAOC has taken a leading role in advancing and protecting the rights of consumers, employees, and injured victims in both the courts and the Legislature. Particularly relevant here is the fact that CAOC took an active role in advocating for the passage of the California Homeowner Bill of Rights, which was passed in the aftermath of the foreclosure crisis that throttled not only the nation generally but California homeowners specifically, bringing about the need for this legislation.

CAOC has long participated as an amicus curiae in precedent-setting decisions shaping California law. (*See, e.g.*, *Hernandez v. Restoration Hardware, Inc.* (2018) 4 Cal.5th 260; *T.H. v. Novartis Pharmaceuticals Corp.* (2017) 4 Cal.5th 145; *Kesner v. Superior Court* (2016) 1 Cal.5th 1132; *Horiike v. Coldwell Banker Residential Brokerage Co.* (2016) 1 Cal. 5th 1024; *Rose v. Bank of America, N.A.* (2013) 57 Cal.4th 390; *Brinker Restaurant Corp. v.*

Superior Court (2012) 53 Cal.4th 1004; and *In re Tobacco II Cases* (2009) 46 Cal.4th 298.)

CAOC is familiar with the issues before this Court and the scope of their presentation in the parties' briefing. CAOC believes that the briefs submitted by Plaintiff and Appellant, Kwang K. Sheen, fully and adequately address the issues presented, namely, that a mortgage servicer owes a borrower a duty of care to refrain from making material misrepresentations about the status of a foreclosure sale following the borrower's submission of, and the servicer's agreement to review, an application to modify a mortgage loan. Nevertheless, for the reasons stated above, CAOC believes that it is particularly well-suited to assist the Court in "broadening its perspective" on the context of the issues presented. (See *Connerly v. State Personnel Bd.* (2006) 37 Cal.4th 1169, 1177.)[1]

[1] No party or its counsel authored any part of this brief. Except for CAOC and its counsel here, no one made a monetary contribution, or other contribution of any kind, to fund its preparation or submission. (Cal. Rules of Ct., rule 8.520 subd. (f)(4).) Counsel gratefully acknowledge the invaluable assistance of William Liang, a third-year student at Berkeley Law, in drafting this brief.

BRIEF OF CONSUMER ATTORNEYS OF CALIFORNIA

I. INTRODUCTION

This case presents the following question: Does a mortgage servicer owe a borrower a duty of care to refrain from making material misrepresentations about the status of a foreclosure sale following the borrower's submission of, and the servicer's agreement to review, an application to modify a mortgage loan?

CAOC submits this brief to provide additional information about the consumer harms caused by negligent mortgage servicing, as well as the need for a negligence-based duty of care to address those harms. Gaps in both the California Homeowner Bill of Rights (HBOR) and other laws have left borrowers vulnerable to mortgage servicing abuse. For many people, home ownership is their largest investment and most important financial decision. As a result, public policy considerations weigh heavily in favor of a duty of care. Indeed, protecting borrowers will only become more important as the coronavirus pandemic strains the economy and the mortgage system.

II. DISCUSSION

Mortgage servicers wield incredible power over borrowers. As one expert put it, mortgage servicers are the "ferrymen" of American homeownership: "They can shepherd you across the waters of paying off your loan and ultimately becoming debt free. But, when those waters get rough, they can also throw you overboard." (Christopher Odinet, *Foreclosed: Mortgage Servicing*

and the Hidden Architecture of Homeownership in America (Feb. 7, 2019) at p. 2, Cambridge University Press.)

Unfortunately, borrowers have often faced abuse at the hands of mortgage servicers. Even before the 2008–09 financial crisis, scholars documented how the changing structure of the mortgage servicing industry put borrowers at risk. (*See, e.g.*, Kurt Eggert, *Limiting Abuse and Opportunism by Mortgage Servicers* (2004) 15 Hous. Pol'y Debate 753; Katherine Porter, *Misbehavior and Mistake in Bankruptcy Mortgage Claims* (2008) 87 Tex. L. Rev. 121.) The traditional view of mortgages was that they were applied for and the bank holding the mortgage managed it across the life of the loan. However, in order to increase profits, mortgages became pieces of merchandise and loan servicing was increasingly decoupled from loan origination. (Kurt Eggert, *Limiting Abuse and Opportunism by Mortgage Servicers*, *supra* at 754.) This industry structure left borrowers with servicers they didn't choose and often had never even heard of, while creating incentives for servicers to underinvest in the quality of service provided to mortgagees who they had no personal relationship with. At times, little stopped mortgagors from actively misleading consumers in order to collect fees, such as late fees. (*Id.* at 768–70.)

The mortgage meltdown of the 2008–09 financial crisis exposed some of these weaknesses in the mortgage system, as it revealed servicing abuse on a massive scale. The stories of abuse were innumerable and often heartbreaking: one elderly couple was hit with an unexpected $300 increase in their monthly payment

after their servicer took advantage of an obscure contractual provision allowing servicers to force additional property insurance on borrowers; a family of six had their home sold to an investment firm after their mortgage was transferred to a new servicer who refused to honor their modification agreement because a single page was allegedly not notarized; and a widow lost her valuables, home videos, and the urn containing her late husband's remains when Bank of America sent a contractor to perform a "break-in foreclosure" of her home. (Christopher Odinet, *Foreclosed: Mortgage Servicing and the Hidden Architecture of Homeownership in America, supra* at p. 2–3, 99.)

In response to the crisis, a coalition of state attorneys general investigated the industry. They found significant problems, including that a majority of delinquent homeowners never received any type of loss mitigation program. (Mark Totten, *The Enforcers & the Great Recession* (2015) 36 Cardozo L. Rev. 1611, 1641.) Eventually, in 2012, federal law enforcement and 49 state attorneys general reached a $25 billion settlement (the National Mortgage Settlement) with the nation's five largest mortgage servicers. (Gary Menes, *Chapter 838: Foreclosing Preventable Foreclosures for Closure: Successors in Interest* (2017) 48 U. Pac. L. Rev 498, 502.) The settlement sought to address certain widespread servicing violations, including "robo-signed" affidavits in foreclosure proceedings and "dual tracking" of loan modification requests. (National Consumer Law Center, *Understanding The National Mortgage Settlement: A Guide For Housing Counselors* (June 2013).)

Federal and state legislators passed laws that built on the standards of conduct established in the National Mortgage Settlement. Regulations by the Consumer Financial Protection Bureau (CFPB) were issued under the Real Estate Settlement Procedures Act. (*See generally* National Consumer Law Center, *Mortgage Servicing and Loan Modifications* (2019), *updated at* www.nclc.org/library.) In California, legislators passed HBOR in response to foreclosures of over one million California homes between 2008 and 2011. (California Department of Justice, *California Homeowner Bill of Rights Fact Sheet* (2012).)[2]

Of course, no one statute, including HBOR, could address all the problems in the mortgage servicing industry. Therefore, to be protective of borrowers, the authors of HBOR specifically left in place all of borrowers' rights and remedies. (*See* Cal. Civ. Code § 2924.12(g) ["The rights, remedies, and procedures provided by this section are in addition to and independent of any other rights, remedies, or procedures under any other law. Nothing in this section shall be construed to alter, limit, or negate any other rights, remedies, or procedures provided by law."].)

These remedies should include the clear recognition of a common law negligence-based duty of care as an essential protection for borrowers. There can be no question that this is necessary, because, as is discussed below: 1) there are significant

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[2]https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKEwiztYyZ0-HrAhUNip4KHRAVAqcQFjAAegQIARAB&url=https%3A%2F%2Fwww.oag.ca.gov%2Fsystem%2Ffiles%2Fattachments%2Fpress_releases%2FFact%2520Sheet.docx&usg=AOvVaw1xeN1MaqmyMfCf2ncICRfa.

gaps in HBOR; 2) mortgage servicers have continued to engage in egregious conduct since HBOR was passed; and 3) negligence-based accountability is required to curb the type of conduct that has become endemic in the mortgage servicing industry.

Moreover, affirming a common law duty of care does not constitute judicial enlargement of HBOR. The statute was expressly designed to operate alongside common law doctrines. (Cal. Civ. Code § 2924.12(g).) By affirming that mortgage servicers owe borrowers a negligence-based duty of care, the Court would affirm important protections for borrowers who suffer mortgage servicing abuse, yet fall outside the scope of HBOR and other statutes and regulations.

A. HBOR by its very terms does not protect borrowers from all abuses visited upon them by the mortgage servicing industry.

Reliance exclusively on HBOR can leave borrowers susceptible to serious harm. For instance, as described in the examples below, HBOR excludes or provides fewer protections for borrowers who take out a junior lien mortgage, borrowers whose loans are serviced by a small servicer, or borrowers who do not live at the property. (*See* Cal. Civ. Code § 2924.15; *compare* § 2924.12 [listing sections with a private right of action against large servicers] *with* § 2924.19 [listing sections with a private right of action against small servicers]. (*See* National Housing Law Project, *California Foreclosure Defense Practice Guide* (2017), at 5.)[3]

[3] http://calhbor.org/wp-content/uploads/2013/04/June-2017-NHLP-Foreclosure-Newsletter.pdf.

As an example, in 2013, borrower Glen Matthews (*Matthews v. Specialized Loan Servicing, LLC* (C.D. Cal. Apr. 15, 2020, No. CV-ED-20-00307), 2020 WL 1889043, at *1) fell behind on his home loans when he lost his job and could not afford to pay his mortgages. (Plaintiff's Complaint at 10, *Matthews* (E.D. Cal., Dec. 14, 2019, No. CV-ED-20-00307.) Matthews had many discussions with his servicer, Ocwen, to work out a payment plan for his second loan. (*Id.*) Eventually, Ocwen verbally informed Matthews that Ocwen was going to charge off the loan and reconvey the deed of trust to Matthews. (*Id.*) A few months later, Matthews got a new job and was able to catch up on the payments for his first loan. (*Id.*)

Six years later, in 2019, Matthews received a notice from a new loan servicer, Specialized Loan Servicing (SLS), saying that Matthews was in default on his second loan and the servicer intended to foreclose. (*Id.*) Baffled, Matthews contacted SLS and was told that Ocwen had "changed their minds"—Ocwen had never charged off the loan nor reconveyed the deed but instead, had transferred the mortgage to SLS. (*Id.* at 11.) From 2013 to 2019, neither servicer told Matthews that his loan was still outstanding nor even that it had been transferred. (*Id.* at 11.)

After SLS refused to honor Matthews' agreement with Ocwen, Matthews sought a loan modification to save his home. (*Id.*) However, SLS told Matthews that it had already conducted its own review and determined that Matthews did not qualify for a modification. (*Id.*) Even though Matthews had never sent in an application, SLS had apparently done its own review based on

figures it had gathered on its own. (*Id.* at 12.) SLS provided no useful information about this modification denial, and when Matthews did submit an application, SLS denied Matthews a modification because of the number of years that had passed since Matthews last made a payment. (*Id.* at 12–13.)

The court determined that Matthews, who like Sheen had sought modification of a second lien loan, did not benefit from HBOR protections. (*Id.* at *7.) This was because the mortgage in question was a second lien mortgage case against his negligent mortgage servicer provider was dismissed. (*Id.* at *9.)[4]

Borrower Cristian Alvarado lost his job in 2016 when his employer downsized. As a result, Alvarado fell behind on his mortgage payments. (Plaintiff's Complaint at 6, *Alvarado v. 360 Mortg. Grp., LLC,* N.D. Cal., No 5:17-cv-04655, at 2017 WL 4647752.) When Alvarado called his mortgage servicer, 360 Mortgage, to request a foreclosure alternative, he learned that 360 Mortgage had already issued a notice of default and elected to sell the house. (*Id.*) Alvarado had never received any notice of the foreclosure proceeding. (*Id.*) As Alvarado sought a way to save his home, multiple representatives from 360 Mortgage falsely told Alvarado that he shouldn't bother applying for a modification. (*Id.* at 7.) 360 Mortgage also refused to accept payments from a borrower aid program, Keep Your California Home, allegedly due to the circular reasoning that Alvarado was in default. (*Id.* at 7.)

[4] Matthew's breach of contract claim was found to be barred by the statute of frauds. (*Matthews*, 2020 WL 1889043, at *6–*7.)

Here, HBOR did not help Alvarado, because of the "small servicer" exception. Given that Alvarado's servicer was a "small servicer" that foreclosed on fewer than 175 mortgages per year, Alvarado was not eligible to receive the full protection HBOR might otherwise offer. Therefore, despite HBOR, Alvarado had no statutory remedy for the false information the mortgage service had provided him. (*Alvarado v. 360 Mortg. Grp., LLC* (N.D. Cal. Oct. 16, 2017, No. 17-CV-04655), 2017 WL 4647752, at *3.) His case was dismissed. (*Alvarado*, 2017 WL 4647752, at *3, *6.)

In a third case, *Sanchez v. Aurora Loan Servs., LLC* (C.D. Cal. June 10, 2014, No. CV-13-088460), 2014 WL 12589660, at *4, in 2011, borrower Eduardo Sanchez fell on hard times and struggled to make his mortgage payments. (Plaintiff's Second Amended Complaint, *Sanchez v. Aurora Loan Servs., LLC* (E.D. Cal., June 30, 2014, No. CV-13-08846, 2014 WL 10100986, at ¶ 14.) When Sanchez sought a loan modification, he experienced a "lengthy loan modification nightmare" in dealing with his servicer, Aurora, whose representatives repeatedly demanded that he resubmit documents he had already submitted. (*Id.* at ¶ 24.) Aurora finally agreed to modify his loan and not foreclose on the property if Sanchez made a $30,000 payment. (*Id* at ¶¶ 29–30.) The agreement was verbal, but Aurora promised to send the paperwork after receiving Sanchez's payment. (*Id.* at ¶ 32.) Sanchez exhausted his savings and even sold his vehicle to finance the payment, which Aurora accepted and cashed. (*Id.* at ¶¶ 30, 33–39.) However, Aurora never sent the promised paperwork. (*Id.* at ¶¶ 39, 42.)

A few weeks later, Sanchez learned that Aurora was transferring his account to a new servicer, Nationstar. (*Id.* at ¶¶ 40–41.) Anxious about his agreement with Aurora, Sanchez called Nationstar, and, after multiple attempts, finally received confirmation of his $30,000 payment from a Nationstar representative. (*Id.* at ¶¶ 43–47.) However, subsequent Nationstar representatives repeatedly denied any record of the $30,000 payment and threatened to initiate foreclosure. (*Id.* at ¶¶ 48–55.)

Sanchez enlisted the assistance of a nonprofit organization to help determine the status of his payment and obtain another modification. (*Sanchez*, 2014 WL 12589660, at *3.) Nationstar eventually sent Sanchez a modification offer, but the deadline to submit a notarized acceptance was unreasonably short, and Nationstar refused Sanchez's attempt to accept the agreement verbally. (*Id.* at *4.)

Desperate, Sanchez rushed to short sell his property significantly below fair market value because that at least would avoid the loss he would incur as a result of foreclosure. (Plaintiff's Second Amended Complaint, *Sanchez* (June 30, 2014, No. CV-13-088460, 2014 WL 10100986, at ¶ 60.)

In his suit against his mortgage servicers, Sanchez could not establish the clear and unambiguous promise necessary for a promissory estoppel claim. (*Sanchez,* 2014 WL 12589660, at *15.) And Sanchez was never even credited the $30,000 payment that Aurora had accepted and cashed. (*Id.* at ¶ 61.) But, because Sanchez's house was a rental property, he was not eligible for

protection under HBOR and his case was dismissed. (*Id.* at *7, *27.)

In each of these examples, HBOR by its very terms failed to help borrowers despite outrageous conduct by their mortgage service providers.

B. Negligence has continued to pervade the mortgage servicing industry in the years since HBOR was enacted.

Since the last economic crisis, abusive and negligent mortgage servicing has persisted across the industry. In its examination of the mortgage servicing industry in 2016, the CFPB found:

> [The industry's investments in compliance] have not been sufficient across the marketplace. Outdated and deficient servicing technology continues to pose considerable risk to consumers in the wider servicing market. These shortcomings are compounded by lack of proper training, testing, and auditing of technology-driven processes, particularly to handle more individualized situations related to delinquencies and loss mitigation processes.

(CFPB, *Supervisory Highlights Mortgage Servicing*, Special Edition (June 2016), at 3.)[5] The industry still attains only a "mixed" compliance record with inadequate investments in loss mitigation communications, according to the CFPB's 2019 analysis. (CFPB,

[5] https://www.consumerfinance.gov/documents/509/Mortgage_Servicing_Supervisory_Highlights_11_Final_web_.pdf.

(Jan. 2019), at 60–61. *2013 RESPA Servicing Rule Assessment Report*.)[6] Indeed, the necessity for recent enforcement actions, as well as the filing of a number of class action lawsuits, demonstrate the industry's failure to clean up its conduct or to invest in necessary compliance practices.

For instance, in 2017, federal and state authorities brought action against Ocwen—one of the largest nonbank servicers—for vast servicing abuses that had occurred since 2014. (Plaintiffs' Motion for Summary Judgment at 1, *CFPB v. Ocwen* (June 5, 2020), No. 9:17-CV-80495.) Ocwen's own Head of Servicing described Ocwen's proprietary information system as "[a]n absolute train wreck," and Ocwen's mismanagement led to complaints from hundreds of thousands of borrowers. (Plaintiff's Complaint at 14, 49, *CFPB v. Ocwen* (Apr. 20, 2017, No. 9:17-CV-80495.)[7]

In one exemplar case, Ocwen's delinquent practices were numerous. It increased a borrower's principal balance by $161,000 when the borrower entered into a loan modification after which Ocwen was unable to explain why. Ocwen failed to post the borrower's payments on time or at all. Ocwen also charged the borrower for flood insurance that the borrower did not need, because his property was not in a flood zone. Finally, Ocwen erroneously attempted to foreclose on the borrower. (*Id.* at 37.)

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[6] https://files.consumerfinance.gov/f/documents/cfpb_mortgage-servicing-rule-assessment_report.pdf.

[7] https://files.consumerfinance.gov/f/documents/20170420_cfpb_Ocwen-Complaint.pdf.

Wells Fargo has likewise negligently managed its mortgage portfolio, causing financially-distressed borrowers to lose their homes. (*See* Stipulation of Class Action Settlement, *Hernandez v. Wells Fargo Bank* (ND Cal. Apr. 1, 2020), No. 3:18-cv-07354.) For eight years—beginning in 2010 but continuing through 2018—Wells Fargo used automated software that wrongly determined borrowers did not qualify for government-mandated mortgage modifications. (Third Amended Complaint at 6, *Hernandez* (ND Cal. Feb 6, 2020), No. 3:18-cv-07354.) During all this time, Wells Fargo failed to appropriately audit its software in order to ensure compliance despite promising to do so in previous consent decrees. (*Id.* at 7.) Even after Wells Fargo discovered some of these system errors, it still concealed the problem and did not reform its auditing practices until it faced third-party audits. (*Id.* at 8–9, 12.) As a result of Wells Fargo's negligence, over 500 borrowers who should have received loan modifications were foreclosed upon. (*Id.* at 12.)

Although borrowers in the Ocwen and Well Fargo cases might have some remedy apart from a negligence claim, the cases demonstrate how the industry's most powerful actors continue to take advantage of borrowers. Alongside other statutory and common law claims, a negligence-based duty is necessary to combat borrower mistreatment.

C. Public policy demands that bad actors in the mortgage servicing industry be held fully accountable, particularly when many current borrowers are facing the harsh reality of the coronavirus pandemic.

Empirical research shows that mortgage servicers' negligent behavior is consequential for individual borrowers and society at large. As documented by the Federal Reserve Bank of Chicago, servicers' organizational capacity and infrastructure investments are an important determinant of loan modifications, "impacting the ability of millions of households to avoid foreclosure." (Sumit Agarwal et al., *Federal Reserve Bank of Chicago, Policy Intervention in Debt Renegotiation: Evidence from the Home Affordable Modification Program* (revised 2016).) Yet, servicers vary significantly in how likely they are to modify and cure mortgages; the worst servicers cure as few as 10 percent of delinquent loans, rather than the 38 percent cured by the best. (Carolina Reid et al., *Rolling the Dice on Foreclosure Prevention: Differences Across Mortgage Servicers in Loan Modifications and Loan Cure Rates* (2017) 27 Housing Pol'y Debate at 1, 2, 4, and 22.) Because the quality of mortgage servicing is far from uniform, an affirmation of a duty of care would help ensure that borrowers receive proper service.

Indeed, protecting borrowers from servicing abuse has become even more essential as the coronavirus pandemic strains the economy and the mortgage system. Complaints to the CFPB have spiked to an all-time high in recent months, reflecting

consumers' financial hardship during the pandemic.[8] Borrowers have reported that mortgage servicers are refusing to provide deferrals for skipped payments and placing borrowers in unwanted forbearance plans.[9] For example, one borrower reported:

> My account with Wells Fargo was placed in forbearance or trial plan by mistake in [redacted date], twice. . . .This situation has generated significant issues on my side, as other lenders are now reluctant to provide any financing until the situation gets resolved or some time goes by before they are [willing] to look at my applications again. . . . [Wells Fargo] massively fail[s] in disclosing that credit score agencies will still be informed about the situation and that a note on the report will indicate that at some point, the account was in forbearance.[10]

Another borrower reported:

> When businesses were ordered shut during the beginning stages of COVID-19, my wife was one of the unfortunate employees to become laid off. . . . I applied

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[8] CFPB, Consumer Complaint Database, https://www.consumerfinance.gov/data-research/consumer-complaints/.

[9] Kate Berry, *CFPB gets earful from consumers about mortgage servicers*, American Banker (May 10, 2020) https://www.americanbanker.com/news/cfpb-gets-earful-from-consumers-about-mortgage-servicers.

[10] CFPB, Consumer Complaint Database, Complaint 3678207, https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/3678207.

> through the Wells Fargo website (servicer) and was granted a forbearance. . . .[however, I continued to receive payment requests, including a] letter that stated my account was in past due status and that failure to bring your loan current may result in fees, the acceleration of your repayment terms or the possibility of foreclosure. . . . Due to the threat of foreclosure, I diverted funds from other obligations so that I could pay my account in full to avoid foreclosure [after calling multiple times but facing extremely long hold times].[11]

Furthermore, the rise of nonbank servicers since the last economic crisis has left the industry even less prepared for another mortgage crisis. (*See* Christopher Odinet, *Foreclosed: Mortgage Servicing and the Hidden Architecture of Homeownership in America*, *supra* at 121.) While nonbank entities serviced only 6 percent of unpaid loan principle balances for single-family homes in 2010, their share increased to 31 percent by 2015. (*Id.* at 121.) Nonbank servicers have proliferated in part because they are not subject to capital holding requirements that were adopted in response to the last financial crisis—but this means that they lack funds to draw on in a downturn. (*Id.* at 121–122.) When a crisis hits, "servicing, including loss mitigation efforts, falls apart. To make matters worse, sometimes the loans are transferred to yet another nonbank servicer. Servicing transfers are often where

[11] CFPB, Consumer Complaint Database, Complaint 3718212, https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/3718212.

breakdowns in loss mitigation occur as applications are lost and homeowner phone calls don't get returned." (*Id.* at 125.)

Many borrowers today are obviously facing hard times. This has been acknowledged by Attorney General Xavier Becerra, who sent a letter to mortgage servicers reminding them of their legal obligations to borrowers: [12] "As the dual economic and public health crises continue, many California homeowners may fall behind on their mortgage payments."[13] As they face these hard times, endemic servicing abuses, and, in fact, the current increased risk of mortgage servicing abuses, borrowers need the full extent of their statutory and common law protections, including a clearly expressed negligence-based duty of care.

III. CONCLUSION

For all of the reasons discussed above and in the Plaintiff's briefs, CAOC strongly urges this Court to affirm that mortgage servicers owe borrowers a duty of care to refrain from making material misrepresentations about the status of a foreclosure sale following the borrower's submission of, and the servicer's agreement to review, an application to modify a mortgage loan servicing agreement.

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[12] California Department of Justice, *Attorney General Becerra Reminds Mortgage Servicers of Their Obligations to California Homeowners During COVID-19 Pandemic* (Aug. 4, 2020), https://oag.ca.gov/news/press-releases/attorney-general-becerra-reminds-mortgage-servicers-their-obligations-california.

[13] *Id.*

Dated: Sept. 18, 2020

Respectfully submitted,

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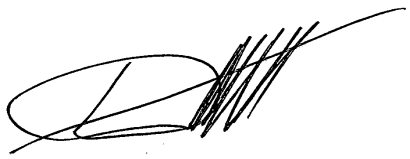

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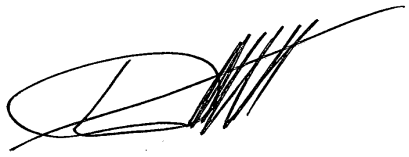
CERTIFICATE OF COMPLIANCE

Pursuant to Cal. Rules of Ct., rule 8.204, subd. (c)(1), counsel of record certifies that this Application to File and Amicus Brief of Consumer Attorneys of California is produced using 13-point Times New Roman type, including footnotes, and contains 3,618 words. Counsel relies on the word count provided by Microsoft Word word processing software.

DATED: Sept. 18, 2020 ARBOGAST LAW



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DECLARATION OF SERVICE

I, the undersigned, declare:

1. That declarant is, and was at the time of service, a citizen of the United States, over the age of 18 years, not a party to, or interested in, this legal action; and that declarant's business address is 7777 Fay Avenue, Suite 202, La Jolla, CA 92037-4324.

2. That on the date indicated below, declarant served this **APPLICATION OF CONSUMER ATTORNEYS OF CALIFORNIA FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF IN SUPPORT OF PLAINTIFF; AND BRIEF** via Truefiling electronic service, https://tf3.truefiling.com, as indicated in the attached Service List:

SEE ATTACHED SERVICE LIST

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on this 18th day of September, 2020, within the United States.

David M. Arbogast

SERVICE LIST

Gustavo Naranjo, et al., v. Spectrum Security Services, Inc.

Supreme Court Case No. S258019

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STATE OF CALIFORNIA
Supreme Court of California

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Case Name: **SHEEN v. WELLS FARGO BANK**
Case Number: **S258019**
Lower Court Case Number: **B289003**

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9/18/2020

Date

/s/David Arbogast

Signature

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