

# SUPREME COURT COPY

No. S183703

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

SUPREME COURT  
FILED

MAY 25 2012

Frederick K. Chitrich Clerk

Deputy

ALLAN PARKS,

*PLAINTIFF AND APPELLANT,*

vs.

MBNA AMERICA BANK, N.A.,

*DEFENDANT AND RESPONDENT.*

AFTER A DECISION BY THE COURT OF APPEAL, FOURTH APPELLATE  
DISTRICT, DIVISION THREE, CASE No. G040798  
REVERSING A JUDGMENT OF THE  
SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE  
CASE No. 04CC00598  
THE HONORABLE GAIL S. ANDLER, JUDGE

RESPONDENT'S CONSOLIDATED OPPOSITION TO THE  
REQUESTS OF PLAINTIFF/APPELLANT AND ATTORNEY  
GENERAL KAMALA D. HARRIS FOR JUDICIAL NOTICE IN  
SUPPORT OF THEIR RESPECTIVE LETTER BRIEFS

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*Counsel for Respondent MBNA America Bank, N.A.,  
now known as FIA Card Services, N.A.*

SERVICE ON THE ATTORNEY GENERAL AND THE DISTRICT ATTORNEY REQUIRED  
BY CAL. BUS. & PROF. CODE § 17209 AND CAL. RULES OF COURT, RULE 8.29

Respondent MBNA America Bank, N.A. (“MBNA”)<sup>1</sup> hereby conditionally opposes the separate requests of Appellant Allan Parks (“Parks”) and Attorney General Kamala D. Harris, as *amicus curiae*, that this Court take judicial notice of a letter of June 27, 2011, from Treasury Department General Counsel George W. Madison to Acting Comptroller of the Currency John Walsh (the “Requests”).

MBNA has no objection to the Requests if the Court grants MBNA’s own request for judicial notice of a letter of April 4, 2011, from United States Senators Thomas R. Carper and Mark Warner to Acting Comptroller Walsh. (See MBNA’s Request for Judicial Notice in Support of Answer to the *Amicus Curiae* Brief of the Consumer Attorneys of California [filed June 8, 2011].) As Parks now acknowledges, the views of the United States Senators principally involved in the passage of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“DFA”) (Pub. L. No. 111-203 (July 21, 2010) 124 Stat. 1376) are particularly relevant to the meaning of the DFA. (See Parks’ Letter Br. at 7-8 [relying on a colloquy between Senator Carper, one of the legislation’s key sponsors, and Senator Chris Dodd, the Chairman of the Senate Banking Committee].) For that very reason, MBNA requested judicial notice of Senators Carper and Warner’s letter. As MBNA noted at the time, “[t]he Senators’ letter is relevant to this Court’s consideration of the intended effect of the [DFA], and the National Bank Act, 12 U.S.C. § 21 *et seq.*” (MBNA’s Request at 1.)

General Counsel Madison’s letter to the *same* person, Acting Comptroller Walsh, followed the Senators’ letter by a mere two months, and they both address the *same* topics: the meaning of the DFA and the regulatory response of the Office of the Comptroller of the Currency.

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<sup>1</sup> Respondent MBNA America Bank, N.A. is now known as FIA Card Services, N.A.


Although Senators Carper and Warner's views on those topics are certainly more authoritative than General Counsel Madison's, MBNA does not object to the Court's taking notice of the latter so long as it also takes notice of the former. The letters should be treated alike for purposes of judicial notice.

For the foregoing reasons, the Court should only grant the recent Requests of Parks and the Attorney General for Judicial Notice of General Counsel Madison's Letter to Acting Comptroller Walsh if the Court also grants MBNA's previously filed Request for Judicial Notice of Senators Carper and Warner's Letter to Acting Comptroller Walsh.

DATED: May 25, 2012

ARNOLD & PORTER LLP

By:

  
LAURENCE J. HUTT  
Attorneys for Respondent

**PROOF OF SERVICE**

***Allan Parks v. MBNA America Bank, N.A.***

I am employed in the State of California. I am over the age of 18 and not a party to the above-entitled action. My business address is Three Embarcadero Center, San Francisco, CA, 94111.

On May 25, 2012, I served the foregoing document described as a **RESPONDENT'S CONSOLIDATED OPPOSITION TO THE REQUESTS OF PLAINTIFF/ APPELLANT AND ATTORNEY GENERAL KAMALA D. HARRIS FOR JUDICIAL NOTICE IN SUPPORT OF THEIR RESPECTIVE LETTER BRIEFS**, by placing a true copy thereof enclosed in sealed envelopes addressed as follows:

Michael R. Vachon Law Office of Michael Vachon, Esq. 17150 Via del Campo, Suite 204 San Diego, CA 92127 <i>Counsel for Plaintiff and Appellant</i>	District Attorney for the County of Orange 401 Civic Center Drive Santa Ana, CA 92701
Sheldon H. Jaffe Deputy Attorney General California Department of Justice 455 Golden Gate Ave., Suite 11000 San Francisco, CA 94102-7004	Clerk of the Court California Superior Court, County of Orange Civil Complex Center 751 West Santa Ana Blvd. Santa Ana, CA 92701
Clerk of the Court California Court of Appeal Fourth Appellate District Division Three 601 West Santa Ana Blvd Santa Ana, CA 92701	Office of the Comptroller of the Currency Litigation Department Attn: Douglas Jordan, Senior Counsel 250 E Street SW Washington, D.C. 20219-4515
Appellate Coordinator Office of the Attorney General Consumer Law Section 300 S. Spring Street Los Angeles, CA 90013-1230	David M. Arbogast Arbogast Bowen LLP 11400 W. Olympic Boulevard, 2nd Floor Los Angeles, CA 90064
J. Mark Moore Spiro Moss LLP 11377 W. Olympic Boulevard, Fifth Floor Los Angeles, CA 90064-1683	James R. McGuire Rita F. Lin Aaron D. Jones Morrison & Foerster LLP 425 Market Street San Francisco, CA 94105
Bruce E. Clark Sullivan & Cromwell LLP 125 Broad Street New York, NY 10004	Achyut J. Phadke Sullivan & Cromwell LLP 1870 Embarcadero Road Palo Alto, CA 94303

**By U.S. mail.** I enclosed the document in a sealed envelope or package addressed to the persons at the addresses above and

placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with this business' practice for collecting and processing correspondence for mailing. On the same day the correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

I am employed in the State of California where the mailing occurred. The envelope or package was placed in the mail at San Francisco, CA.

**STATE:** I, **Bonnie Hastings**, declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on May 25, 2012, at San Francisco, CA.

Bonnie Hastings