

# SUPREME COURT COPY

Case No. S183703

SUPREME COURT  
**FILED**

FEB - 1 2011

Frederick K. Ohlrich Clerk

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Deputy

SUPREME COURT OF THE STATE OF CALIFORNIA

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**ALLAN PARKS**

*Plaintiff and Appellant,*

**vs.**

**MBNA AMERICA BANK, N.A.,**

*Defendant and Respondent*

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After Decision by Fourth District - Division Three Court of Appeal (Case No. Go40798) Reversing Judgment by Orange County Superior Court (Case No. 04CC00598), The Honorable Gail S. Andler Presiding

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**PLAINTIFF/APPELLANT'S REQUEST FOR JUDICIAL NOTICE  
[NO. 2]**

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Attorney for Plaintiff/Appellant Allan Parks

**I.**  
**Motion to Take Judicial Notice of the Fact That Congress Enacted No Statutes Prior to 1913 Regulating the Operational Activities of National Banks**

Under California Rules of Court, Rules 8.252 and 8.54 and Evidence Code Sections 459, Plaintiff/Appellant Allan Parks ("Parks") requests that the Supreme Court take judicial notice of the fact that prior to 1913 Congress did not enact any statutes regulating the operational activities<sup>1</sup> of national banks.

The fact that Congress did not enact any statutes regulating the operational activities of national banks during the 50 year period after the National Bank Act ("NBA") was originally enacted in 1863 is relevant because: (1) it demonstrates that when Congress passed the NBA in 1863, it intended that national banks' operational activities would be regulated by State law; and (2) it refutes MBNA's contention, in its Opening Brief on the Merits, that national banking has always been the subject of comprehensive federal regulation.

During the trial court and court of appeal proceedings, Parks did not request that the trial court take judicial notice of this fact.

**II.**  
**Memorandum Of Points & Authorities**

Reviewing courts "may take judicial notice of any matter specified in [Evidence Code] Section 452." Evidence Code §459(a). Under Evidence Code Section 452, judicial notice may be taken of "legislative enactments issued by ... the authority of the United States" and "official acts of the legislative ... department of the United States." Evid. Code §452(b), (c). Accordingly, it is proper to take judicial notice of the absence of Congressional statutes.

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<sup>1</sup> As utilized herein, and in Plaintiff/Appellant's Answer Brief on the Merits, "operation activities" refers to a bank's formation of contracts and transactions with its customers, including the rights, obligations, and remedies attached to the formation of those agreements and performance of those transactions.

It is not practical to serve and file a copy of the matter for which judicial notice is sought because the fact to be noticed is the *absence* of statutes regulating national bank operations. It is impossible and/or impracticable to file and serve something that does not exist. Accordingly, under Evid. Code Section 455(a) (which applies pursuant to Evid. Code §459(c)), MBNA can and should be given an opportunity to present to the Supreme Court any information it believes is relevant regarding (1) the propriety of taking judicial notice of this matter, and (2) the tenor of the matter to be noticed.

LAW OFFICE OF MICHAEL R. VACHON, ESQ.  
Attorney for Plaintiff/Appellant Allan Parks

Date: January 31, 2011

  
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Michael R. Vachon, Esq.

**III.**  
**Declaration of Michael R. Vachon, Esq. in Support of Motion to Take  
Judicial Notice**

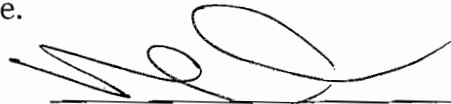
I, Michael R. Vachon, Esq., declare:

1. I am over 18 years of age, and an attorney licensed to practice law in the State of California. I am the attorney of record for Plaintiff/Appellant Allan Parks, and have represented him at all times during this litigation (including during the trial court and court of appeal proceedings). Except as otherwise stated, I have personal knowledge of the facts contained herein and, if called as a witness, could and would competently testify to such facts.

2. I personally researched the issue of whether or not Congress, prior to 1913, enacted any statutes regulating the operational activities of national banks, and my research did not reveal any such statutes, and on this basis I believe that no such statutes were enacted.

On penalty of perjury under the laws of the State of California, I declare that the facts stated in this declaration are true.

Date: January 31, 2011



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Michael R. Vachon, Esq.

PROOF OF SERVICE

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

Supreme Court of California Case No. S183703

I am over the age of 18 and not a party to the within action. My business address is: 16935 West Bernardo Drive, Suite 175, San Diego, California 92127. On the date shown below, I served the foregoing document(s) described as:

**PLAINTIFF/APPELLANT'S REQUEST FOR JUDICIAL NOTICE [No. 2]**

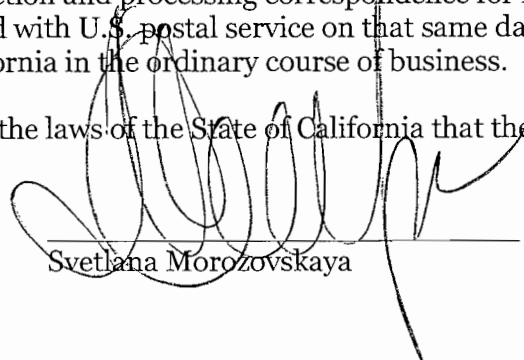
on the interested parties in this action as follows:

ARNOLD & PORTER, LLP Attn.: Laurence J. Hutt, Esq. 777 South Figueroa Street, 44th Floor Los Angeles, CA 90017-5844 <b>(Attorneys for MBNA America Bank, N.A.)</b>	Sheldon H. Jaffe, Esq. Deputy Attorney General State of California Department of Justice 455 Golden Gate Avenue, Suite 11000 San Francisco, CA 94102-7004
Comptroller of the Currency Litigation Department Attn.: Douglas Jordan, Senior Counsel 250 E Street SW Washington, DC 20219	District Attorney for the County of Orange 401 Civic Center Drive Santa Ana, CA 92701

**(BY MAIL):** The envelope was mailed with postage thereon fully prepaid. I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at San Diego, California in the ordinary course of business.

I declare under penalty of perjury under the laws of the State of California that the facts stated in this Proof of Service are true.

Date: January 31, 2011

  
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Svetlana Morozovskaya