

COPY

No. S199074

In the Supreme Court of the State of California

HAROLD ROSE AND KIMBERLY LANE,

Plaintiffs and Appellants,

vs.

BANK OF AMERICA, N.A.,

Defendant and Respondent.

SUPREME COURT
FILED

JUL 17 2012

Frank A. McGuire Clerk

Deputy

**MOTION FOR JUDICIAL NOTICE;
DECLARATION OF MARGARET M. GRIGNON**

After A Decision By The Court Of Appeal,
Second Appellate District, Division Two, Case No. B230859

On Appeal From A Judgment Of Dismissal
Los Angeles County Superior Court, Case No. BC433460
Honorable Jane L. Johnson

Service On The Los Angeles District Attorney And
The California Attorney General Required By
Cal. Bus. & Prof. Code § 17209 and Cal. R. Ct. 8.29(b)

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I.

MOTION THAT COURT TAKE JUDICIAL NOTICE

Pursuant to Evidence Code section 452, and California Rules of Court, Rule 8.252, Defendant and Respondent Bank of America, N.A. requests that this Court take judicial notice of the following documents, attached as Exhibits A through H:

Exhibit A, a true and correct copy of the Congressional Research Service Summary of H.R. 1362, the “Financial Institutions Regulatory Relief Act of 1995,” 104th Congress, First Session, available on-line through the Library of Congress at: <http://thomas.loc.gov/cgi-bin/bdquery/z?d104:HR01362:@@D&summ2=m&>. (CRS Summary, H.R. No. 1362, 104th Cong., 1st Sess. (1995).)

Exhibit B, a true and correct copy of the Congressional Research Service Summary of H.R. 1858, the “Financial Institutions Regulatory Relief Act of 1995,” 104th Congress, First Session, available on-line through the Library of Congress at: <http://thomas.loc.gov/cgi-bin/bdquery/z?d104:HR01858:@@D&summ2=m&>. (CRS Summary, H.R. No. 1858, 104th Cong., 1st Sess. (1995).)

Exhibit C, a true and correct copy of the United States House of Representatives Report on H.R. 1858, the “Financial Institutions Regulatory Relief Act of 1995,” 104th Congress, First

Session, House Report No. 104-193, available on-line through the United States Government Printing Office at: <http://www.gpo.gov/fdsys/pkg/CRPT-104hrpt193/pdf/CRPT-104hrpt193.pdf>. (H.R.Rep. No. 104-193, 1st Sess., p. 105 (1995).)

Exhibit D, a true and correct copy of Congressional Research Service Summary of S. 650, the “Economic Growth and Regulatory Paperwork Reduction Act of 1995,” 104th Congress, First Session, available on-line through the Library of Congress at: <http://thomas.loc.gov/cgi-bin/bdquery/z?d104:SN00650:@@@D&summ2=m&>. (CRS Summary, Sen. No. 650, 104th Cong., 1st Sess. (1995).)

Exhibit E, a true and correct copy of the United States Senate Committee on Banking, Housing and Urban Affairs Report on S. 650, the “Economic Growth and Regulatory Paperwork Reduction Act of 1995,” 104th Congress, First Session, Senate Report No. 104-185, available on-line through the United States Government Printing Office at: <http://www.gpo.gov/fdsys/pkg/CRPT-104srpt185/pdf/CRPT-104srpt185.pdf>. (Sen. Rep. No. 104-185, 1st Sess., p. 21 (1995).)

Exhibit F, a true and correct copy of excerpts from the Conference Report on H.R. 3610, the “Omnibus Consolidated Appropriations Act, 1997,” 104th Congress, Second Session, House Report No. 104-863, available on-line through the United States Government Printing Office at: <http://www.gpo.gov/fdsys/pkg/>

CRPT-104hrpt863/pdf/CRPT-104hrpt863.pdf. (Conference Report, H.R.Rep. No. 104-863, 2d Sess., p. 483 (1996).)

Exhibit G, a true and correct copy of experts from the Congressional Record in the United States House of Representatives, September 28, 1996, H12094-95, available on-line through the United States Government Printing Office at: <http://www.gpo.gov/fdsys/search/citation.result.CREC.action?congressionalRecord.volume=142&congressionalRecord.pagePrefix=H&congressionalRecord.pageNumber=12095&publication=CREC>. (Debate on H.R. No. 3610, H12095 (1996).)

Exhibit H, President William Jefferson Clinton's Statement on Signing the Omnibus Consolidated Appropriations Act, 1997, September 30, 1996, available on-line through the American Presidency Project at: <http://www.presidency.ucsb.edu/ws/index.php?pid=52021#axzz1zla1Il4W>. (Pres. Clinton, Statement on Signing the Omnibus Consolidated Appropriations Act, 1997 (Sept. 30, 1996).)

II.

MEMORANDUM OF POINTS AND AUTHORITIES

A. **Judicial Notice Should Be Taken Of The Attached Materials**

Judicial notice may be taken of legislative history. (Evid. Code, § 452, subd. (c); *East Bay Asian Local Development Corp. v. State of California* (2001) 24 Cal.4th 693, 711, fn. 5 [legislative history is properly subject to judicial notice]; *Planning & Conservation League v. Dept. of Water Resources* (1998) 17 Cal.4th 264, 271, fn. 4 [same].)

This judicially noticeable material is relevant to the issues in this appeal. One of the primary issues in this appeal concerns Congress's intent in repealing the Truth In Savings Act's, 12 U.S.C. § 4301 et seq. ("TISA"), civil liability provision. As initially enacted, TISA contained a civil liability provision. In 1996, during the second session of the 104th Congress, Congress passed the Omnibus Consolidated Appropriations Act of 1997 ("Consolidated Appropriations Acts"), Public Law No. 104-208, which repealed the civil liability provision as of September 30, 2001. (Pub. L. No. 104-208 (Sept. 30, 1996) 110 Stat. 3001.) Exhibits A-H are the legislative history of the Consolidated Appropriations Act as well as two related bills that had proposed the repeal earlier, during the first session of the 104th Congress: (1) the Financial Institutions Regulatory Relief Act of 1995; and (2) the

Economic Growth and Regulatory Paperwork Reduction Act of 1995.

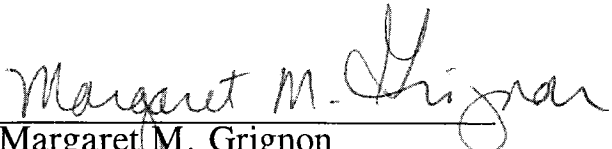
Exhibits A-H consist of Congressional Research Service Summaries, Congressional Reports, Statements on the Congressional Record, and a Presidential Signing Statement related to these three bills. This material is part of TISA's legislative history, and illustrates Congress's rationale for the repeal of the civil liability provision. As such, these materials are relevant to the issues in this appeal.

III. CONCLUSION

For the foregoing reasons, this Court should take judicial notice of Exhibits A-H.

DATED: July 16, 2012.

REED SMITH LLP

By 
Margaret M. Grignon
Attorneys for Defendant
and Respondent
Bank of America, N.A.

DECLARATION OF MARGARET M. GRIGNON

I, MARGARET M. GRIGNON, declare:

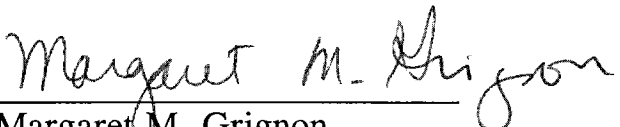
1. I am an attorney at law licensed to practice before the courts of the State of California. I am a partner of the law firm of Reed Smith LLP, appellate counsel to Defendant and Respondent Bank of America, N.A. I am the attorney primarily responsible for preparing the Answer Brief on the Merits.

2. This is an appeal from a judgment of dismissal after an order sustaining a demurrer. The Answer Brief on the Merits is filed concurrently with this Motion for Judicial Notice.

3. Bank of America, N.A. respectfully requests that this Court take judicial notice of the true and correct copy of the legislative history, attached as Exhibits A-H, as relevant to this appeal. This judicially noticeable material is relevant to the issues in this appeal. One of the primary issues in this appeal concerns Congress's intent in repealing Truth In Savings Act's, 12 U.S.C. § 4301 et seq. ("TISA"), civil liability provision. As initially enacted, TISA contained a civil liability provision. In 1996, during the second session of the 104th Congress, Congress passed the Omnibus Consolidated Appropriations Act of 1997 ("Consolidated Appropriations Acts"), Public Law No. 104-208, which repealed the civil liability provision as of September 30, 2001. Exhibits A-H are the legislative history of the Consolidated Appropriations Act as well as two related bills that proposed the repeal earlier, during the

first session of the 104th Congress: (1) the Financial Institutions Regulatory Relief Act of 1995; and (2) the Economic Growth and Regulatory Paperwork Reduction Act of 1995. This material is part of TISA's legislative history, and illustrates Congress's rationale for the repeal of the civil liability provision.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on July 16, 2012, in Los Angeles, California.


Margaret M. Grignon
Margaret M. Grignon

PROOF OF SERVICE

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is REED SMITH LLP, 355 South Grand Avenue, Suite 2900, Los Angeles, CA 90071-1514. On July 16, 2012, I served the following document(s) by the method indicated below:

**MOTION FOR JUDICIAL NOTICE;
EXHIBITS IN SUPPORT OF MOTION FOR JUDICIAL NOTICE
(FILED CONCURRENTLY WITH ANSWER BRIEF ON THE MERITS)**

- by transmitting via facsimile on this date from fax number 213.457.8080 the document(s) listed above to the fax number(s) set forth below. The transmission was completed before 5:00 PM and was reported complete and without error. The transmission report, which is attached to this proof of service, was properly issued by the transmitting fax machine. Service by fax was made by agreement of the parties, confirmed in writing. The transmitting fax machine complies with Cal.R.Ct 2003(3).
- by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California addressed as set forth below. I am readily familiar with the firm's practice of collection and processing of correspondence for mailing. Under that practice, it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after the date of deposit for mailing in this Declaration.
- by placing the document(s) listed above in a sealed envelope(s) and by causing personal delivery of the envelope(s) to the person(s) at the address(es) set forth below. A signed proof of service by the process server or delivery service will be filed shortly.
- by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.
- by placing the document(s) listed above in a sealed envelope(s) and consigning it to an express mail service for guaranteed delivery on the next business day following the date of consignment to the address(es) set forth below. A copy of the consignment slip is attached to this proof of service.
- by transmitting via email to the parties at the email addresses listed below:

PLEASE SEE ATTACHED SERVICE LIST.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on July 16, 2012, at Los Angeles, California.


Rebecca R. Rich

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