Case No. 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, COUNTY OF LOS ANGELES
CASE NO. BC631510
THE HONORABLE JUDGE ROBERT L. HESS

AMICUS CURIAE BRIEF OF JOHN A. PHILLIPS
IN SUPPORT OF PLAINTIFF KWANG K. SHEEN

ROBERT A. HUDDLESTON, ESQ., SBN 83662
HUDDLESTON & SIPOS LAW GROUP LLP
1280 Civic Drive, Suite 210
Walnut Creek, CA 94596
Telephone: (925) 947-0100
Facsimile: (925) 947-0111
Email: rhuddleston@hslawllp.com

Attorneys for *Amicus Curiae* JOHN A. PHILLIPS

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

I. INTRODUCTION AND SUMMARY OF ARGUMENT

This appeal brings into clear focus an important issue facing courts throughout the State of California: When a lending institution accepts a borrower's application to refinance a loan, does it owe that borrower a duty of care to reasonably consider the loan application?

In this appeal, Wells Fargo argues that it owes no duty of care to an existing borrower. *Amicus Curiae* John A. Phillips (hereinafter "Phillips") is a borrower confronting the very same issue.

Phillips' dispute, with Bank of America, culminated in a twelve (12) day court trial and a determination that the Bank had a duty to reasonably consider Phillips' refinance application and that the Bank was negligent in the handling, processing and denial of Phillips' loan application. As will be shown, Phillips' claims are, in many respects, very similar to the claims of appellant Kwang K. Sheen in this appeal: That when a lending institution accepts a refinance application from an existing borrower it owes that borrower a duty to reasonably consider the refinance application and the lending institution should be held liable in tort when it acts negligently in the handling, processing and denial of the loan application.

Phillips, because his case was tried and resulted in a detailed 72 page Statement of Decision, can provide a "fleshed out" factual basis for why, when a lending institution accepts a borrower's refinance application, it should owe a duty to that borrower to reasonably consider the application.

As detailed below, this Court should **not** adopt the general rule advanced herein by Wells Fargo that a lending institution owes no duty of care to a borrower even in circumstances where it has accepted the borrower's application for consideration. Instead, the Court should adopt and conclusively provide guidance to the lower courts that the widely recognized balancing test known as the "*Biakanja* Factors"[1] establishes that a lending institution owes a duty to an existing borrower to reasonably consider a refinance application once it has accepted that application for consideration.

II. PHILLIPS' REFINANCE APPLICATION AND THE BANK'S NEGLIGENCE

To provide context for this *Amicus* Brief, some background of Phillips' dispute with Bank of America is necessary.

Phillips is an individual who borrowed $1,120,000 from Bank of America in 2009. (Statement of Decision, hereinafter "SOD," 14: 4-16)[2] The loan was to be secured by a first deed of trust encumbering his primary residence. Through errors by the Bank and the escrow company it chose, the deed of trust he signed was never recorded. (SOD 14:18-15:16:7) In

[1] *Biakanja v. Irving* (1958) 49 Cal.2d 647, 659.

[2] Filed herewith is a Motion for Judicial Notice requesting that the Court take judicial notice of the Superior Court's Statement of Decision and Amended Judgment in *Bank of America v. Phillips,* San Francisco Superior Court Case No. CGC 13531103, and the Order Granting Petition for Review in *Bank of America v. Phillips,* California Supreme Court Case No. S259482.

2011, despite Phillips making all required monthly payments on the interest-only loan, Bank of America filed an action against Phillips for Declaratory Relief and breach of a "Loan Agreement" and "Document Correction Agreement." (SOD 16:9-13, 21:2-9) In fact, Phillips had never signed either of the Agreements alleged. (SOD 5:5-20) In March of 2012, to resolve the error by the Bank that led to the deed of trust not being recorded and to lower his monthly payments (because interest rates had significantly decreased in the almost three years he had the loan), Phillips applied to refinance his loan for the same principal amount. (SOD 17:14-18) At the time of his refinance application, Phillips could not apply with another lending institution because the Bank had recorded a *lis pendens* that impaired the title to his home. (SOD 21:2-14)

The Bank accepted Phillips' refinance application for consideration in March 2012. Phillips provided the Bank with proof that his income and expenses were the same or better than in 2009, that his credit history was equal to or better than it had been, and that he had three times more in his 401(k) retirement account. (SOD 17:27-18:3) The Bank thereafter spent the next three months reviewing the application and having the property appraised. Phillips' home was appraised by the Bank's appraiser on July 2, 2012 for $1,750,000, more than it was appraised for in 2009. (SOD 19:1-2) Without informing Phillips the Bank changed the loan being applied for to a "non-owner occupied" loan, which affected the amount it

could loan to Phillips. This reduced the loan amount for the refinance from $1,120,000 to $1,050,000, which would cause Phillips to have to pay the Bank $70,000 to obtain the loan. (SOD 19:4-11) The property was Phillips' primary residence and the Bank was negligent in changing the loan to a "non-owner occupied" loan and in denying his application because his financial condition, in all material ways, was better than when he was originally lent money. (SOD 65:25-13) Phillips is never told of this decision by the Bank to change the loan to a "non-owner occupied" loan. In fact, throughout this time, Phillips is assured by Bank personnel that his refinance was progressing and that it would likely be approved. (SOD 19:13-14)

The Bank finally, in September 2012, over five months after he applied for the loan, denied Phillips' refinance application. The stated reason for the denial was that Phillips did not have sufficient liquid assets to close the loan. (SOD 20:19-23) At no point did the Bank even ask Phillips what liquid assets he had. In fact, Phillips had more than $200,000 in additional liquid assets available to him. (SOD 20:23-28) The Superior Court concluded that: "[Bank of America's] conduct in the handling of Phillips' refinance application fell below applicable standards of care for a financial institution in such a situation and the Bank's conduct was negligent in its handling, processing and denial of Phillips' refinance application. If the Bank had properly handled, considered and processed

Phillips' refinance application, the refinance application would have and should have been granted." (SOD 67:11-15)

What eventually happened to Phillips, although he did not lose his home like appellant Kwang K. Sheen, was devastating. After his refinance application was denied he had to defend against the Bank's Complaint (alleging that he breached two Agreements he never signed). Phillips did so while still making the payments due on the $1,120,000 loan. (SOD 40:27-41:1) In May 2013, on the eve of trial, the Bank dismissed the Complaint without prejudice, refiled a new action against Phillips and recorded another *lis pendens* against Phillips' property. Phillips could not afford to continue making the payments of $4,783.33 per month on the loan and defend against a second Complaint by the Bank. (SOD 22:16-22) The Superior Court granted his motion to expunge the *lis pendens* and he sold the property. (SOD 23:19-24:14) Phillips attempted to continue making the monthly payments due on the loan to the Bank, but the Bank refused his payments. (SOD 24:15-26:17)

Four years after the second case was filed, in 2017, a court trial was held in San Francisco Superior Court before the Honorable A. James Robertson, II. The issues before the Court included the Bank's claim that Phillips breached the terms of the Promissory Note by non-payment and the claims by Phillips in his Cross-Complaint. In Phillips' Cross-Complaint, among other causes of action, Phillips claimed that the Bank owed him a

duty of care to reasonably consider his loan application and that the Bank was negligent in the handling, processing and denial of the loan application. (SOD 65:14-20) Twelve witnesses testified including five experts (two experts on escrow practices, one expert on lending practices and two appraisers). The court trial lasted twelve days. (SOD 1:2-11)

The Superior Court entered a 72 page Statement of Decision that summarized the testimony of each witness, made detailed factual findings and then analyzed the key issues being decided. On Phillips' negligence claim the Superior Court found the following: (1) that the Bank had a duty to reasonably consider Phillips' refinance application; (2) that balancing the "*Biakanja* Factors" (*Biakanja v. Irving* (1958) 49 Cal.2d 659) favors the imposition of such a duty that the Bank exercise reasonable care in the consideration of Phillips' refinance application; (3) that the Bank was negligent in its handling, processing and denial of Phillips' refinance application; and (4) that Phillips was damaged in the amount of $1,260,665 as a result of the Bank's negligence.[3] (SOD 67:10-15, 71:14-16) The Superior Court, exercising its inherent equitable authority, offset the amount owing by Phillips on the original loan ($1,120,000) from the

[3] The largest portion of the damage award to Phillips was based on the amount of equity in his property that was lost as a result of him having to sell the property – damages of $1,100,000. The court found that Phillips' property was worth $1,100,000 more at the time of trial (in 2017) and that he would never have sold it in 2013 but for the actions of the Bank and the denial of his refinance application. (SOD: 69:13-18)

damages found by the trial court, even though the trial court found that Phillips was not in default of his obligations under the 2009 Promissory Note because he had properly tendered payments to the Bank. (SOD 72:9-14) This resulted in a net judgment in favor of Phillips of $140,665. (Amended Judgment, Ex. B to Phillips' Motion for Judicial Notice.)

III. ARGUMENT

In the present appeal, Wells Fargo argues that a borrower can (if the facts warrant) pursue a contract claim against a lender, but not a tort claim for negligence. (Wells Fargo Brief, p. 22) Wells Fargo argues that absent an independent duty, longstanding doctrine cuts sharply against frustrating the parties' bargain by bringing tort law to bear. (Wells Brief, p. 22) Wells Fargo argues that the relationship between a lending institution and its borrower is neither a fiduciary relationship nor a "special relationship" that should give rise to an independent duty to fairly and reasonably consider an existing borrower's refinance application. (Wells Fargo Brief, pp. 28-29) Wells Fargo argues, based on cases such as *Nymark v. Heart Fed. Sav. & Loan Assoc.* (1991) 231 Cal.App.3d 1089, that a lender owes no extra-contractual duty of care when its involvement in the loan transaction does not exceed the scope of its conventional role as "a mere lender of money." (Wells Fargo Brief at p. 29, citing *Nymark*, supra at 1096)

Phillips' case is a spot-light on why a lending institution **should** owe an independent, non-contractual duty to reasonably consider a borrower's

refinance application once it has accepted that application. In Phillips' case, the trial court found that a duty arose because Phillips was an existing borrower, he was only seeking to refinance his existing debt, the bank "accepted, processed and considered" his refinance application, and the bank's representatives told him the application was conditionally approved. (SOD 62:24-65:10) Phillips' case and his dealings with Bank of America show that a "one-size-fits-all" rule, that would allow a lending institution **for any reason** to deny a refinance application, even after it has accepted a borrower's application, is clearly erroneous. In Phillips' case there were admittedly unique circumstances: Phillips' refinance application would have solved Bank of America's problem that no deed of trust secured its loan (a problem created by the Bank's own negligence and that of its chosen escrow company) and the Bank's recordation of a *lis pendens* restricted Phillips in being able to obtain refinancing from another lender.

However, the unique factors present in Phillips' case is precisely why it is important that this Court establish that a lender should be required to use reasonable care in the handling, processing and approval process once it has accepted a borrower's refinance application. The "general rule," as enunciated in case such as *Nymark*, simply should not apply once a lender has accepted a borrower's refinance application. At that point, the lender is not simply "a mere lender of money."

This Court should, once and for all, conclusively hold, based on the "*Biakanja* Factors," that a lending institution owes a duty of care to an existing borrower to reasonably consider a refinance application if it accepts that application for consideration. The *Biakanja* Factors are: the extent to which the transaction was intended to affect the borrower, the foreseeability of the harm to the borrower, the degree of certainty that the borrower suffered injury, the closeness of the connection between the bank's conduct and the injury suffered, the moral blame attached to the bank's conduct and the policy of preventing future harm. (*Biakanja v. Irving* (1958) 49 Cal.2d 647, 659.) *Alvarez v. BAC Home Loans Servicing, L.P.* (2014) 228 Cal.App.4th 941 and other California cases hold that a lender can be held liable for negligence in its handling of a loan transaction **if** the balancing of the *Biakanja* Factors weighs in favor of imposing a duty of care on the lender. *Alvarez, supra,* at 945-946. See also *Garcia v. Ocwen Loan Servicing, LLC,* 2010 WL 1881098, (N.D. Cal. 2010) and *Rosetta v. CitiMortgage, Inc.* (2017) 18 Cal.App.5th 628.)

The Court of Appeal in *Rossetta* applied the reasoning in *Alvarez* to find that a duty of care existed:

> *Alvarez* identified an important distinction not addressed by the *Lueras* [*Lueras v. BAC Loan Servicing, LLP* (2013) 221 Cal.App.4th 49] reasoning -- that the relationship differs between the lender and a borrower at the time the borrower first obtained a loan versus the time the loan is modified. The parties are no longer in an arm's length transaction and thus should not be treated as such. While a loan modification is traditional lending, the parties are now in an established

> relationship. This relationship vastly differs from the one which exists when a borrower is seeking a loan from a lender because the borrower may seek a different lender if he does not like the terms of the loan. *Rossetta, supra* at 640, citing *Meixner v. Wells Fargo Bank, N.A. (E.D. Cal. 2015) 101 F.Supp.3d 938, 954*

The court in *Rossetta* held: "Based on the foregoing, we are convinced that a borrower and lender enter into a new phase of their relationship when they voluntarily undertake to renegotiate a loan, one in which the lender usually has greater bargaining power and fewer incentives to exercise care." *Rossetta, supra at* 640.

The situation confronting Phillips precisely proves the importance of establishing a lending institution's duty of care. Phillips was being sued by his lender for breach of two Agreements he never signed and his property was encumbered by a *lis pendens* that eliminated his ability to obtain a loan from another lender. He applied to refinance his loan and the Bank accepted his application and repeatedly told him it was likely to be approved. Phillips and Bank of America, at that point, clearly entered into a "new phase of their relationship." The trial court's Statement of Decision in Phillips' case extensively details why the *Biakanja* Factors led it to determine that Bank of America owed a duty to exercise reasonable care in the handling, processing and approval process of his refinance application:

> Under the circumstances of this case, J. PHILLIPS has proven that the BANK had a duty to reasonably consider his refinance application. The duty arose because J. PHILLIPS was already a borrower from the BANK by reason of the

> 2009 Loan, the refinance only sought to refinance the amount owing under the 2009 Note, the BANK accepted, processed and considered the refinance application, the BANK told him his refinance application was conditionally approved, and the refinance application would have solved the BANK's lack of a deed of trust for the 2009 Note. J. PHILLIPS' situation is similar to a borrower seeking a loan modification from a bank because he was already a borrower from the BANK and he was not seeking any additional money from the BANK; only a payoff and refinance of his existing debt. His motivation for the refinance was, in part, to seek a lower interest rate to lower his monthly payments. As a result of the *lis pendens* the BANK had recorded he was limited in the financial institutions which would consider his refinance application. As a result, it is appropriate and proper for the Court to apply the balancing test known as the "*Biakanja* Factors" in determining if the BANK owed a duty to reasonably consider his refinance application in this circumstance. (SOD 62: 24-63:10)

Applying the *Biakanja* Factors to any borrower seeking to refinance their loan, once the lender has accepted the borrower's application, clearly favors the imposition of a duty of care on the lender. Filtering the Factors through the experiences of Kwang K. Sheen and John Phillips simply highlights the importance of imposing a duty.

The first *Biakanja* Factor is the extent to which the transaction was intended to affect the borrower. In every refinance application the transaction is intended to affect the borrower. The second *Biakanja* Factor is the foreseeability of harm. The situations faced by both Sheen (facing foreclosure without a refinance) and Phillips (facing a lawsuit that tied up his property by the *lis pendens* encumbrance) show that a denial of a borrower's refinance application is clearly likely to cause the borrower

harm. Virtually every borrower seeking to refinance their loan is going to be harmed in some way if the lender does not use reasonable care in processing the loan application. The third *Biakanja* Factor is the degree of certainty that the borrower will suffer harm. Again, the situations of Sheen (foreclosure pending) and Phillips (prevented from being able to refinance with any other lender and being sued by the lender) show the high degree of certainty that they would suffer harm. Also again, virtually every borrower seeking to refinance their loan will likely be harmed if the lender's negligence leads to the denial of the application. The fourth *Biakanja* Factor is the closeness of the connection between the lender's conduct and the injury suffered. In almost every possible situation, the negligent denial of a refinance application is going to lead to the harm incurred by the borrower. This is clearly evident in both Sheen (foreclosure) and Phillips (forced to sell his property and incurred over $1,200,000 in damages). The fifth *Biakanja* Factor is the moral blame attached to lender's conduct. All that is being asked is that this Court establishes that a lender, once it accepts a borrower's refinance application, use reasonable care in its processing, handling and approval process. Negligently handling a refinance application, when a denial is clearly likely to cause harm to the borrower, and in the context of a lender-borrower relationship where the lender expects the borrower to meticulously follow all of the lender's

requirements and guidelines, is morally blame-worthy. Lenders should be expected to act responsibly.

The sixth *Biakanja* Factor takes into account preventing future harm. This Factor should be the most important element to this Court. Borrowers should be protected from the negligence of their lenders -- when they are an existing borrower and when the lender has accepted their loan application. Borrowers often have little or no alternatives to refinancing with their existing lender. Phillips, because of Bank of America's conduct, had no other source to refinance his loan and save his home. Sheen likely also had no other recourse. Lenders can protect themselves by simply following appropriate and reasonable guidelines in how they process and handle a borrower's refinance application. Lenders are in the best position for this Court to place the burden of acting responsibly and reasonably. If they do not, and they negligently handle a borrower's refinance application once they have accepted the application, the lender should be accountable under basic tort law for the damages incurred.

Without a duty to use reasonable care in the handling, processing and approval process, borrowers like Kwang K. Sheen and John Phillips would be completely trapped by their lenders. All that is being asked of this Court is a clear determination that a lender, once it accepts a borrower's refinance application, should simply use reasonable and ordinary care in handling and processing the application.

Is that so difficult? No, the lender simply needs to act reasonably and responsibly. There will be no liability and none of the catastrophic prophesies envisioned by Wells Fargo if the lender just acts reasonably and responsibly.

Is imposing a duty so extraordinary? No, if a lender chooses to accept a refinance application from an existing borrower, it is expected that it will handle that application appropriately. Lenders require strict adherence by borrowers to its lending guidelines; lenders should be held to a minimum "reasonable care" standard.

Will it result in tremendous burden and expense to lending institutions? No, this is a lender's business – to lend money and to deal fairly with its borrowers and customers.

Is it unfair to lending institutions? No. In Phillips' case the harm to him was a loss totaling over $1,200,000. In Sheen's case it was the loss of his home. Surely the balancing of potential harms, where lending institutions would simply be required to use reasonable care in the handling, processing and approval process for a refinance application, with the potential for massive individual harm to borrowers, weighs in favor of a universal declaration by this Court requiring that a duty of care be required of lenders.

It would be a gross injustice if this Court were to determine that, no matter the circumstances, lending institutions can **never** be required to

fairly and reasonably consider an existing borrower's refinance application even after it has agreed to consider it. Phillips' case is a shining example as to why the *Biakanja* Factors should lead this Court to a conclusive declaration of a Bank's duty to its borrowers. Wells Fargo Bank and Bank of America clearly and unequivocally should have been required to simply use reasonable care in their consideration of their borrowers' refinance applications once they agreed to accept their applications.

IV. CONCLUSION

Amicus Curiae John A. Phillips respectfully requests that this Court reverse the appellate court's determination in this case that, under no circumstance, does Wells Fargo owe a duty of care to reasonably consider the loan application of appellant Kwang K. Sheen and that it be declared that in this State, based on the *Biakanja* Factors, a lending institution owes a duty of care to reasonably consider a borrower's refinance application once it accepts that application for consideration.

Dated: August 18, 2020 Respectfully submitted,

HUDDLESTON & SIPOS LAW GROUP LLP

By /s/ Robert A. Huddleston
ROBERT A. HUDDLESTON, ESQ.
Attorney for *Amicus Curiae* John A. Phillips

CERTIFICATE OF WORD COUNT

Pursuant to Rule 8.520(c)(1) of the California Rules of Court, I hereby certify that this brief contains 3,729 words, including footnotes and excluding the caption page, table of contents, table of authorities, signature blocks, and certificates. In making this certification, I have relied on the word count of the computer program used to prepare the brief.

Dated this 18th day of August, 2020.

HUDDLESTON & SIPOS LAW GROUP LLP

By /s/ Robert A. Huddleston
ROBERT A. HUDDLESTON, ESQ.
Attorney for *Amicus Curiae* John A. Phillips

CERTIFICATE OF SERVICE

Kwang v. Sheen v. Wells Fargo Bank, N.A., et al.
Case No. S258019

I, the undersigned, declare that I am over the age of 18 and am not a party to this action. I am employed in City of Walnut Creek, California; my business address is 1280 Civic Drive, Suite 210, Walnut Creek, CA 94596.

On the date below, I served a copy of the foregoing document entitled ***AMICUS CURIAE BRIEF OF JOHN A. PHILLIPS IN SUPPORT OF PLAINTIFF KWANG K. SHEEN*** on the interested parties in said case as follows:

BY THE COURT'S TRUEFILING SYSTEM: Upon filing, I will cause the document to be transmitted via the Court's TrueFiling System.

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. This declaration is executed in Oakland, California on August 18, 2020.

/s/ Michele Hinton
MICHELE HINTON

SERVICE LIST

Attorneys for Plaintiff Kwang K. Sheen Noah Grynberg (296080) Los Angeles City for Community Law and Action 1137 North Westmoreland Avenue, #16 Los Agneles, CA 90039 Telephone: (310) 866-7527 noah.grynberg@laccla.org
Attorneys for Plaintiff Kwang K. Sheen Leslie A. Brueckner Public Justice, P.C. 475 14TH Street, Suite 610 Oakland, CA 94612 Telephone: (510) 622-8205 lbrueckner@publicjustice.net aspiegel@publicjustice.net
Attorneys for Respondent Wells Fargo Bank, N.A. David H. Fry Benjamin J. Horwich Susan Ahmadi MUNGER, TOLLES & OLSON LLP 560 Mission Street, 27th Floor San Francisco, CA 94105-2907 Telephone: (415) 512-4000 Facsimile: (415) 512-4077 David.Fry@mto.com Ben.Horwich@mto.com susan.ahmadi@mto.com

Attorneys for Respondent Wells Fargo Bank, N.A. Rachel G. Miller-Ziegler (Pro Hac Vice) MUNGER, TOLLES & OLSON LLP 1155 F Street N.W., 7th Floor Washington, D.C. 20004-1357 Telephone: (202) 220-1100 Facsimile: (202) 220-2300 Rachel.Miller-Ziegler@mto.com
Attorneys for Respondent Wells Fargo Bank, N.A. Jeffrey S. Gerardo (146508) Steven M. Dailey (163857) KUTAK ROCK LLP 5 Park Plaza, Suite 1500 Irvine, CA 92614 Telephone: (949) 417-0999 Facsimile: (949) 417-5394 Jeffrey.Gerardo@kutakrock.com Steven.Dailey@kutakrock.com
Attorneys for Defendant FCI Lender Services, Inc. Cheryl S. Chang, Esq. Jessica McElroy, Esq. BLANK ROME 2029 Century Park East, 6th Floor Los Angeles, CA 90067 Telephone: (424) 239-3400 Facsimile: (424) 239-3434 chang@blankrome.com jmcelroy@blankrome.com

Attorneys for Defendant Mirabella Investments, LLC Chris Evans, Esq. Ajay Gupta, Esq. GUPTA EVANS & ASSOCIATES 1620 5th Avenue, Suite 650 San Diego, CA 92101 ce@socallaw.com ag@socallaw.com
Attorneys for Amicus Curiae, *The Attorney General of California* Amy Chmielewski, Esq. Deputy Attorney General 300 Spring Street, Suite 1702 Los Angeles, CA 90013 Tel: (213) 269-6407 Fax: (916) 731-2146 amy.chmielewski@doj.ca.gov
Jonathan Fink Julie Hansen WRIGHT FINLAY & ZAK LLP 4665 MacArthur Court, Suite 200 Newport Beach, CA 92660 Tel: (949) 477-5050 Fax: (949) 608-9142 jfink@wrightlegal.net jhansen@wrightlegal.net
Lisa Sitkin STEINHART & FALCONER, LLP sitkinlaw@earthlink.net
Attorneys for National House Law Project Lisa Sitkin National Housing Law Project 1663 Mission Street, Suite 460 San Francisco, CA 94103-2486 Tel: (415) 546-7000 lsitkin@nhlp.org

David Arbogast
ARBOGAST LAW
7777 Fay Avenue, Suite 202
La Jolla, CA 92037-4324
Tel: (619) 374-1281
Fax (619) 374-1281
david@arbogastlaw.com

Attorneys for Amicus Curiae The Justice Association of California, the California Chamber of Commerce, and the Western Bankers Association

Fred J. Hiestand, Esq.
3418 Third Avenue, Suite 1
Sacramento, CA 95817
Tel: (916) 448-5100
fred@fjh-law.com

Attorneys for Defendant/Respondent Wells Fargo Bank

Jason E. Goldstein, Esq.
BUCHALTER NEMER
18400 Von Karman Avenue, Suite 800
Irvine, CA 92612
jgoldstein@buchalter.com

Attorneys for Bank of America in the matter of Bank of America v. Phillips

Eugene J. Chiarelli, Esq.
CHIARELLI & MOLLICA LLP
2121 North California Boulevard, Suite 520
Walnut Creek, CA 94596
Telephone: (925) 262-4888
Facsimile: (925) 262-4889
ejc@chiarellilaw.com

Attorneys for Bank of America in the matter of Bank of America v. Phillips Cheryl S. Chang, Esq. Jessica McElroy, Esq. BLANK ROME 2029 Century Park East, 6th Floor Los Angeles, CA 90067 Telephone: (424) 239-3400 Facsimile: (424) 239-3434 chang@blankrome.com jmcelroy@blankrome.com
Clerk of the Court Los Angeles Superior Court c/o Honorable Robert L. Hess Stanley Mosk Courthouse, Department 24 111 North Hill Street Los Angeles 90012 Case No. BC631510 [**By USPS Only**]
Clerk of the Court California Court of Appeal Second Appellate District 300 S. Spring Street, Fl. 2, N. Tower Los Angeles, CA 90013 Case No. B289003 [**By USPS Only**]

STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

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

1. At the time of service I was at least 18 years of age and not a party to this legal action.

2. My email address used to e-serve: **rhuddleston@hslawllp.com**

3. I served by email a copy of the following document(s) indicated below:

Title(s) of papers e-served:

Filing Type	Document Title
APPLICATION	Phillips.Amicus.App.Final
MOTION	Sheen.Motion
ADDITIONAL DOCUMENTS	Sheen.Motion.Ord
BRIEF	Phillips.Amicus.Brief-Final

Service Recipients:

Person Served	Email Address	Type	Date / Time
Jonathan Fink Wright Finlay & Zak, LLP 110615	jfink@wrightlegal.net	e-Serve	8/18/2020 1:42:22 PM
Lisa Sitkin Steinhart & Falconer, LLP	sitkinlaw@earthlink.net	e-Serve	8/18/2020 1:42:22 PM
Christopher Evans Gupta Evans and Associates, PC 293785	ce@socal.law	e-Serve	8/18/2020 1:42:22 PM
Amy Chmielewski Deputy Attorney General 295352	amy.chmielewski@doj.ca.gov	e-Serve	8/18/2020 1:42:22 PM
Lisa Sitkin NHLP 194127	lsitkin@nhlp.org	e-Serve	8/18/2020 1:42:22 PM
Benjamin Horwich Munger, Tolles & Olson LLP 249090	ben.horwich@mto.com	e-Serve	8/18/2020 1:42:22 PM
Susan Ahmadi Munger, Tolles & Olson LLP	susan.ahmadi@mto.com	e-Serve	8/18/2020 1:42:22 PM
David Arbogast Arbogast Law 167571	david@arbogastlaw.com	e-Serve	8/18/2020 1:42:22 PM
Ajay Gupta Gupta Evans and Associates, PC	ag@socal.law	e-Serve	8/18/2020 1:42:22 PM
Julie Hansen	jhansen@wrightlegal.net	e-	8/18/2020 1:42:22

Wright, Finlay & Zak, LLP		Serve	PM
Fred Hiestand Attorney at Law 44241	fred@fjh-law.com	e-Serve	8/18/2020 1:42:22 PM
Leslie Brueckner Public Justice, P.C. 140968	lbrueckner@publicjustice.net	e-Serve	8/18/2020 1:42:22 PM
Noah Grynberg LA Center for Community Law and Action 296080	noah.grynberg@laccla.org	e-Serve	8/18/2020 1:42:22 PM
Jason Goldstein Buchalter Nemer 207481	jgoldstein@buchalter.com	e-Serve	8/18/2020 1:42:22 PM
Steven Dailey Kutak Rock, LLP 163857	steven.dailey@kutakrock.com	e-Serve	8/18/2020 1:42:22 PM
Robert Huddleston Huddleston & Sipos Law Group LLP 83662	rhuddleston@hslawllp.com	e-Serve	8/18/2020 1:42:22 PM
Rachel G. Miller-Zigler	Rachel.Miller-Zigler@mto.com	e-Serve	8/18/2020 1:42:22 PM
Eugene J. Chiarelli	ejc@chiarellilaw.com	e-Serve	8/18/2020 1:42:22 PM
Jessica McElroy 299919	jmcelroy@blankrome.com	e-Serve	8/18/2020 1:42:22 PM

This proof of service was automatically created, submitted and signed on my behalf through my agreements with TrueFiling and its contents are true to the best of my information, knowledge, and belief.

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

8/18/2020

Date

/s/Michele Hinton

Signature

Huddleston, Robert (83662)

Last Name, First Name (PNum)

Huddleston & Sipos Law Group LLP

Law Firm