

No. S199074

**IN THE
SUPREME COURT OF CALIFORNIA**

HAROLD ROSE, et al.,
Plaintiffs and Appellants,

vs.

BANK OF AMERICA, N.A.,
Defendant and Respondent.

SUPREME COURT
FILED

AUG 21 2012

Frank A. McGuire Clerk

Deputy

After A Decision By The Court of Appeal,
Second Appellate District, Division Two, Case No. B230859.
On Appeal From The Superior Court For Los Angeles County,
Case No. BC 433460, The Honorable Jane L. Johnson

**MOTION FOR JUDICIAL NOTICE OF PLAINTIFFS AND APPELLANTS
HAROLD ROSE, ET AL.; DECLARATION OF HENRY H. ROSSBACHER**

Unfair Competition Law Case (Cal. Bus. & Prof. Code § 17209)

THE ROSSBACHER FIRM
HENRY H. ROSSBACHER (060260)
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Attorneys for Plaintiffs and Appellants
Harold C. Rose and Kimberly Lane, et al.

I. MOTION THAT COURT TAKE JUDICIAL NOTICE

TO THE HONORABLE SUPREME COURT OF CALIFORNIA:

Plaintiffs and Appellants Harold C. Rose and Kimberly Lane (“Appellants”) move the Court pursuant to Cal. Evid. Code §§ 452(a), (c) and 459, and Rule 8.252 of the California Rules of Court to take judicial notice of the following matters, attached as Exhibits A through D to Appellants’ Exhibits in Support of Motion for Judicial Notice:

Exhibit A is a true and correct copy of excerpts from draft House of Representatives Senate Banking Committee Bill, H.R. 1362, the “Financial Institutions Regulatory Relief Act of 1995”, 104th Congress, 1st Session, available on-line through the United States Government Printing Office at: <http://www.gpo.gov/fdsys/pkg/BILLS-104hr1362ih/pdf/BILLS-104hr1362ih.pdf>;

Exhibit B is a true and correct copy of excerpts from draft Senate Bill S. 650, the “Economic Growth and Regulatory Paperwork Reduction Act of 1995”, 104th Congress, 1st Session, available on-line through the United States Government Printing Office at: <http://www.gpo.gov/fdsys/pkg/BILLS-104s650is/pdf/BILLS-104s650is.pdf>

Exhibit C is a true and correct copy of excerpts from draft Senate Bill S. 650, the “Economic Growth and Regulatory Paperwork Reduction Act of 1995”, 104th Congress, 1st Session, available on-line through the United States Government Printing Office at: <http://www.gpo.gov/fdsys/pkg/BILLS-104s650rs/pdf/BILLS-104s650rs.pdf>

Exhibit D is a true and correct copy of page number H12093 from the Congressional Record in the United States House of Representatives, September 28, 1996, H12051, available on-line through the United States Government Printing Office at: <http://www.gpo.gov/fdsys/pkg/CREC-1996-09-28/pdf/CREC-1996-09-28-pt2-PgH12051-2.pdf#page=1>

II. MEMORANDUM OF POINTS AND AUTHORITIES

A. Judicial Notice Should Be Taken Of These Matters

Judicial notice may be taken of the decisional, constitutional, and statutory law of any state of the United States and the resolutions and private acts of the Congress of the United States and of the Legislature of this state, as well as the legislative history. (Evid. Code, § 452, (a) and (c)).

This judicially noticeable material is relevant to allow the Court to fully analyze the legislative history of H.R. 3610. Exhibits A through C are draft Senate and House Bills introduced during the first session of the 104th Congress, and Exhibit D is a single page from the Congressional Record in the United States House of Representatives, September 28, 1996 (inadvertently omitted by Respondent, Bank of America, N.A.'s in its Exhibit G).

None of the matters to be noticed relates to proceedings occurring after the order sustaining the demurrer and judgment of dismissal.

This Motion is based on the accompanying Memorandum of Points and Authorities and Declaration of Henry H. Rossbacher; and Appellant's Exhibits in Support of Appellants' Motion for Judicial Notice.

Copies of the matters to be noticed are attached as Exhibit A through D to Appellant's Exhibits in Support of Appellants' Motion for Judicial Notice.

A [Proposed] Order Granting Appellants' Motion for Judicial Notice is separately submitted.

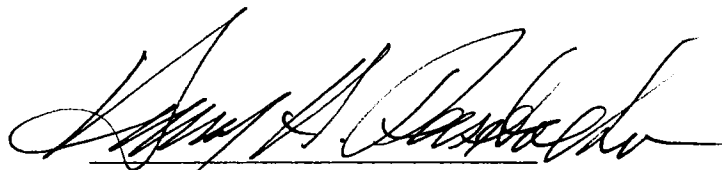
III. CONCLUSION

For the foregoing reasons, this Court should take judicial notice of Appellants' Exhibits A through D.

DATED: August 20, 2012

RESPECTFULLY SUBMITTED,

THE ROSSBACHER FIRM

A handwritten signature in black ink, appearing to read "Henry H. Rossbacher", written over a horizontal line.

Henry H. Rossbacher
Jeffrey Alan Goldenberg

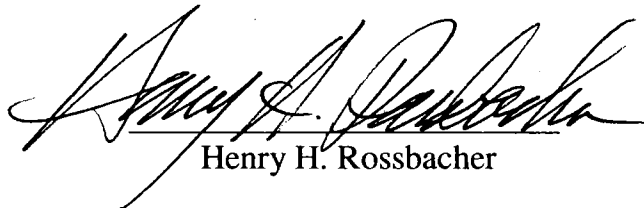
Attorneys for Plaintiffs and Petitioners
Harold Rose and Kimberly Lane

DECLARATION OF HENRY H. ROSSBACHER

I, Henry H. Rossbacher, declare:

1. I am an attorney licensed to practice before all courts in the State of California. My firm, The Rossbacher Firm represents Plaintiffs and Appellants Harold Rose and Kimberly Lane (“Appellants”).
2. This is an appeal from a judgment of dismissal after an order sustaining a demurrer. The Reply Brief on the Merits is filed concurrently with this Motion for Judicial Notice.
3. Appellants respectfully request that this Court take judicial notice of Exhibits A through D attached as Appellants’ Exhibits in Support of Appellants’ Motion for Judicial Notice, as relevant to this appeal. This judicially noticeable material is relevant to allow the Court to fully analyze the legislative history of H.R. 3610.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on August 20, 2012, in Los Angeles, California.



Henry H. Rossbacher

PROOF OF SERVICE
(1013a, 2015.5 C.C.P.)

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California.

I am over the age of 18 and not a party to the within action. My business address is: 811 Wilshire Blvd., Suite 1650, Los Angeles, California 90017-2666.

On August 20, 2012, I served the foregoing document described as **MOTION FOR JUDICIAL NOTICE OF PLAINTIFFS AND APPELLANTS HAROLD ROSE, ET AL.; DECLARATION OF HENRY H. ROSSBACHER** on the interested parties in this action by placing [] the original [x] a true copy thereof enclosed in a sealed envelope addressed as follows:

Scott H. Jacobs, Esq.
REED SMITH LLP
355 South Grand Ave., Suite 2900
Los Angeles, CA 90071
Telephone: (213) 457-8000
Facsimile: (213) 457-8080
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Attorneys for Defendant
Bank of America, N.A.

Los Angeles Superior Court
The Honorable Jane L. Johnson
Department 308
600 So. Commonwealth Ave.
Los Angeles, CA 90005

California Second Appellate District
Division 2
300 S. Spring Street, 2nd Floor
Los Angeles, CA 90013

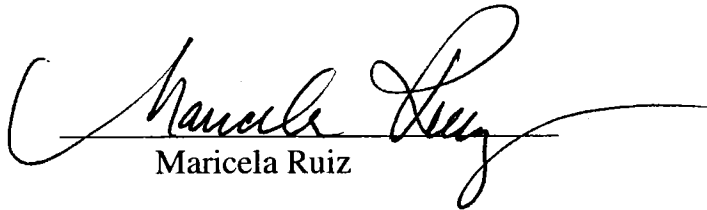
Los Angeles County
District Attorney's Office Hall of Records
320 West Temple St., 5th Fl., Room 540
Los Angeles, CA 90012
213/974-5911

Consumer Law Section of the
California Attorney General's Office
300 South Spring Street, Suite 1702
Los Angeles, California 90013
213/897-6027

I caused such envelope with postage thereon fully prepaid to be placed in the United States mail at Los Angeles, California. 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 Los Angeles, California, in the ordinary course of business. I am aware that on

motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made. Executed on August 20, 2012, at Los Angeles, California.


Maricela Ruiz