

Supreme Court Case No. S267576

In the Supreme Court

OF THE

State of California

TANIA PULLIAM
Plaintiff and Respondent,

vs.

TD AUTO FINANCE LLC
Defendant and Petitioner.

*After A Decision By The Court Of Appeal For the Second Appellate District
Division Five
2nd Civil No. B293435*

*After An Appeal From the Superior Court of Los Angeles County
Hon. Barbara M. Scheper, Judge
Case Number BC633169*

**SUPPLEMENTAL BRIEF OF TD BANK, N.A.
(TD AUTO FINANCE LLC MERGED INTO AND WITH TD BANK, N.A. ON
DECEMBER 21, 2021)**

MCGUIREWOODS LLP
TANYA L. GREENE SBN 267975
ANTHONY Q. LE SBN 300660
WELLS FARGO CENTER, SOUTH TOWER
355 S. GRAND AVE., SUITE 4200
LOS ANGELES, CA 90071-3103
TEL: 213.627.2268 / FAX: 213.457.9899
TGREENE@MCGUIREWOODS.COM
ALE@MCGUIREWOODS.COM

*Attorneys for Defendant and Appellant TD Bank, N.A. (TD Auto Finance LLC merged
into and with TD Bank, N.A. on December 21, 2021)*

CERTIFICATE OF INTERESTED PARTIES

TD Auto Finance LLC merged with and into TD Bank, N.A. (“TDBNA”) on December 31, 2021, with TDBNA surviving as a national banking association. TD Auto Finance is now a division of TDBNA. TDBNA is a wholly-owned subsidiary of TD Bank US Holding Company, a Delaware corporation, which is in turn a wholly-owned subsidiary of TD Group US Holdings LLC, a Delaware limited liability company, which is in turn a wholly-owned subsidiary of The Toronto-Dominion Bank, a Canadian-chartered bank, the stock of which is traded on the Toronto and New York Stock Exchanges under the symbol “TD”.

DATED: February 2, 2022 Respectfully submitted,

MCGUIREWOODS LLP

By: /s/ Tanya L. Greene

Tanya L. Greene

Anthony Q. Le

Attorneys for TD BANK, N.A. (TD
AUTO FINANCE LLC MERGED INTO
AND WITH TD BANK, N.A. ON
DECEMBER 31, 2021)

TABLE OF CONTENTS

	Page
CERTIFICATE OF INTERESTED PARTIES	2
TABLE OF CONTENTS	3
TABLE OF AUTHORITIES.....	4
SUPPLEMENTAL BRIEF.....	5
1. The Holder Rule is not ambiguous.....	6
2. The FTC’s advisory opinion favors TDBNA on the issue here.	6
3. The FTC’s advisory opinion warrants no deference regardless.....	9
CONCLUSION	12
CERTIFICATE OF WORD COUNT	13
PROOF OF SERVICE	14

TABLE OF AUTHORITIES

Page(s)

Federal Cases

Christensen v. Harris Cty.,
529 U.S. 576 (2000)..... 10

Kisor v. Wilkie,
139 S. Ct. 2400 (2019)..... 6, 10

Skidmore v. Swift & Co.,
323 U.S. 134 (1944)..... 10

State Cases

Hoitt v. Dep’t of Rehab.
(2012) 207 Cal. App. 4th 513 6

State Statutes

Civil Code § 1459.5..... 8, 9, 11

Regulations

16 C.F.R. § 433.2..... 7

Trade Regulation Rule Concerning Preservation of Consumers’ Claims and
Defenses, 84 Fed. Reg. 18711-01 (May 2, 2019)..... 7

SUPPLEMENTAL BRIEF

TD Auto Finance LLC, which is a division of TD Bank, N.A., (“TDBNA”) submits this supplemental brief in response to this Court’s January 25 order requesting it.

In January 2022, the Federal Trade Commission issued a “Commission Statement on the Holder Rule and Attorneys’ Fees and Costs.” Exhibit A (“Adv. Op.”). The FTC’s 3-page “advisory opinion” makes four relevant points. First, the FTC asserts that “the Holder Rule does not limit recovery of attorneys’ fees and costs when state law authorizes awards against a holder.” Adv. Op. 1. That is, “[t]he Holder Rule does not eliminate any rights the consumer may have as a matter of separate state, local, or federal law.” *Id.* at 2. Second, the FTC acknowledges that the Holder Rule by itself *does* limit recovery against the holder to the amount paid by the consumer. *Id.* at 3 (noting that in cases without a separate state law about attorney’s fees, “[t]he holder’s obligation to pay costs or fee awards available exclusively against the seller, . . . would be limited to the amount paid by the consumer”). Third, the FTC asserts that this position is the same as the one it took in the 2019 Rule Confirmation notice. *Id.* at 3. Fourth, the FTC categorizes a handful of cases that it labels either “correct[.]” or incorrect when they address “the application of state cost-shifting laws to holders.” *Id.* at 1& nn.1, 2.

For three reasons, the FTC’s new advisory opinion does not affect this Court’s consideration of this case.

1. The Holder Rule is not ambiguous.

To start with, the Holder Rule’s plain text decides this appeal. Deference of any kind to FTC statements depends on the Holder Rule being ambiguous. *Kisor v. Wilkie*, 139 S. Ct. 2400, 2414 (2019) (“[T]he possibility of deference can arise only if a regulation is genuinely ambiguous . . . even after a court has resorted to all the standard tools of interpretation”). This Court first must “carefully consider the text, structure, history, and purpose of a regulation” before resorting to any agency guidance. *Id.* at 2415. “Doing so will resolve many seeming ambiguities out of the box, without resort to *Auer* deference.” *Id.*

The core issue in this appeal can and should be decided on the Holder Rule’s unambiguous terms. Opening Br. at 22-26. (“The Rule’s plain language resolves this appeal: the Court of Appeal wrongly allowed recovery in excess of amounts paid.”). Because the Holder Rule is not ambiguous, there is no need to delve into FTC commentaries on the Rule. *Hoitt v. Dep’t of Rehab.* (2012) 207 Cal. App. 4th 513, 523 (“If the regulatory language is clear and unambiguous, our task is at an end[.]”).

2. The FTC’s advisory opinion favors TDBNA on the issue here.

Next, the new advisory opinion favors TDBNA’s position on the issue presented. This appeal is about the Holder Rule and the claims a consumer

can pursue against a creditor only because the Rule has extended those claims reach. It is not about the Rule's interplay with separate or independent state laws. *See* Reply Br. at 18-23. The question is whether the Holder Rule includes attorney's fees within the term "recovery" and thus caps attorney's fees available for any claim preserved by the Holder Rule at the "amounts paid by the debtor." 16 C.F.R. § 433.2.

The FTC advisory opinion says that the answer is yes. Indeed, the FTC emphasizes that when "the seller's liability for [attorney's] fees may be raised against the holder because of the Holder Rule Notice," then "the holder's obligation to pay costs or fee awards" is "limited to the amount paid by the consumer"). Adv. Op. 3. The FTC also describes attorney's fees as part of the "recovery from the holder." Adv. Op. 1 n.1 (using the term "attorney fee recovery from the holder"). In other words, even the FTC concedes (as it must) that there are at least some instances in which the Holder Rule limits "recovery" of attorney's fees. This is only possible if the term "recovery," as used in the Holder Rule, includes attorney's fees awarded because of claims or defenses the Holder Rule preserves against holder.

The FTC's acceptance of the Holder Rule's plain meaning helps TDBNA. But it adds nothing to what the FTC has already said in a far more deference-worthy publication. *See* Trade Regulation Rule Concerning Preservation of Consumers' Claims and Defenses, 84 Fed. Reg. 18711, 18713 (May 2, 2019) (stating that on claims preserved by the Holder Rule,

“payment that the consumer may recover from the holder—including any recovery based on attorneys’ fees—cannot exceed the amount the consumer paid”).

True, the new advisory opinion adds that when a “separate” state law authorizes attorney’s fees against a holder, it is the FTC’s position that the Holder Rule should not preempt it. Adv. Op. 2-3. But preemption of state law by the Holder Rule is not presented here in this appeal. The Court of Appeal did not address preemption. Opinion 33 (declining to address whether § 1459.5 “independently applie[s]” at all, much less whether it is preempted). Nor did the questions granted for review raise any preemption issue.

Preemption could, but should not, arise later if this Court reverses the Court of Appeal. Section 1459.5 was enacted years after the conduct in this case, well after the fee award itself, and should not be applied retroactively. *See* Answering Br. at 54-57 (raising § 1459.5 but ignoring the retroactivity problem); Reply Br. at 26-28 (explaining that § 1459.5 is not retroactive and thus cannot apply here regardless). Preemption has never been presented here and there is good reason to think it never will be given the retroactivity hurdle Pulliam would first have to overcome.

Pulliam’s supplemental brief does not show that the advisory opinion is relevant to the issues actually presented on this case—instead, it simply asks this Court to jump ahead to preemption. Pulliam Suppl. Br. at 5-7,

(urging this Court to “find that Civil Code section 1459.5 is not preempted by federal law”). Pulliam’s supplemental brief, which should be narrowly focused on addressing the FTC advisory opinion, argues for preemption even where the FTC advisory opinion in no way states that Civil Code Section 1459.5 is not preempted. In fact, the FTC studiously avoids mentioning this California statute at all, even where it took care to identify other states’ general fee-shifting statutes. Adv. Op. 2 n.5. This is as it should be; the FTC is not the authority on Civil Code Section 1495.5 or the application of it retroactively, and thus it makes good sense that the FTC refrained from addressing the statute at all. Because the FTC’s advisory opinion does not address preemption, it remains the case that Pulliam’s request for this Court to reach preemption is premature, unmoored from any holding of the Court of Appeal below, and pushes an issue that should never arise in this case because Section 1495.5 would first have to be held to apply retroactively.

3. The FTC’s advisory opinion warrants no deference regardless.

Last, the advisory opinion warrants no deference.

First, tellingly, Pulliam’s supplemental brief does not even *suggest* that the advisory opinion merits deference in this Court. Pulliam Suppl. Br. 4-7. Pulliam urges this Court “to consider this new advisory opinion,” *id.* at 4, but nowhere identifies the underlying reason to offer it deference.

Second, advisory opinions such as this one do not receive judicial deference beyond their mere “power to persuade” and this opinion lacks any

persuasive effect. Significantly, the U.S. Supreme Court has long warned against deferring to agency opinion letters like the one here. Without “a formal adjudication” or “notice-and-comment rulemaking,” interpretations “such as those in opinion letters” that “lack the force of law—do not warrant *Chevron*-style deference.” *Christensen v. Harris Cty.*, 529 U.S. 576, 587 (2000). Instead, “interpretations contained in formats such as opinion letters are entitled to respect under. . . *Skidmore v. Swift & Co.*, 323 U.S. 134, 140 (1944), but only to the extent that those interpretations have the power to persuade[.]” *Id.* at 587.

Nothing in *Kisor* changes this rule. To satisfy *Kisor*, an agency interpretation must “emanate from those actors, using those vehicles, understood to make authoritative policy in the relevant context.” 139 S. Ct. at 2416; *id.* (rejecting the suggestion that “agency constructions of rules receive greater deference than agency constructions of statutes”).

Here, the FTC’s new advisory opinion is spontaneous agency commentary posted on its website. There was no notice-and-comment period or any apparent formal process to create it. The FTC’s thoughts are thus helpful only if they are persuasive—no real “deference” is at hand.

The only *new* analysis the FTC advisory opinion offers is its discussion of current case law. Yet the FTC’s commentary about the lower court’s decision in this case and other recent case law is far from persuasive. Adv. Op. 1 nn.1., 2. In fact, the FTC’s analysis—mostly confined to

footnotes—does not even correctly *describe* the case law, much less offer persuasive opinions about it.

For instance, the FTC says this case was rightly decided below because it “correctly concluded that the Holder Rule does not limit recovery of attorneys’ fees and costs when state law authorizes awards against a holder.” Adv. Op. 1. But the Court of Appeal made no such ruling. Instead, it held that the Holder Rule *itself* does not limit attorney’s fees, regardless of state law. Opinion 33 (refusing to decide whether § 1459.5 independently applies at all). What the Court of Appeal actually held *conflicts* with the FTC’s statements two pages later, where the FTC confirms that claims based on the Holder Rule alone would be capped, including attorney’s fees, at the amount paid by the consumer. Adv. Op. 3; *see also id.* at 1 n.1 (referring to “attorney fee *recovery* from [the] holder,” thus accepting that attorney’s fees are included in the term “recovery”); (emphasis added); Opening Br. at 22-26.

Thus, if the FTC’s goal was to endorse the decision below, it is endorsing a decision that conflicts with the FTC’s position in its own advisory opinion. As such, the opinion lacks any new, persuasive guidance bearing on this appeal.

CONCLUSION

For these reasons, this Court need not and should not defer to the FTC's new advisory opinion.

DATED: February 2, 2022 Respectfully submitted,

MCGUIREWOODS LLP

By: /s/ Tanya L. Greene

Tanya L. Greene

Anthony Q. Le

Attorneys for TD BANK, N.A. (TD
AUTO FINANCE LLC MERGED INTO
AND WITH TD BANK, N.A. ON
DECEMBER 31, 2021)

CERTIFICATE OF WORD COUNT

The text of this brief consists of 1,719 words as counted by the Microsoft Office Word 2010 word-processing program used to generate this brief.

DATED: February 2, 2022 Respectfully submitted,

MCGUIREWOODS LLP

By: /s/ Tanya L. Greene

Tanya L. Greene

Anthony Q. Le

Attorneys for TD BANK, N.A.

(TD AUTO FINANCE LLC MERGED
INTO AND WITH TD BANK, N.A. ON
DECEMBER 31, 2021)



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
 WASHINGTON, D.C. 20580

Office of the Secretary

January 18, 2022

Commission Statement on the Holder Rule and Attorneys' Fees and Costs

This advisory opinion addresses the Federal Trade Commission's Trade Regulation Rule Concerning Preservation of Consumers' Claims and Defenses, 16 C.F.R. § 433.2, commonly known as the Holder Rule, and its impact on consumers' ability to recover costs and attorneys' fees. This issue has arisen repeatedly in court cases, with some courts correctly concluding that the Holder Rule does not limit recovery of attorneys' fees and costs when state law authorizes awards against a holder,¹ and others misinterpreting the Holder Rule as a limitation on the application of state cost-shifting laws to holders.²

Background on the Rule. The Commission adopted the Holder Rule to protect consumers when they purchase goods or services on credit. The Commission identified multiple practices that sellers use to "cut off" consumers' rights so that the holder of the loan may demand full payment from the consumer despite misconduct by the seller.³ The Commission determined that

¹ See, e.g., *In re Stewart*, 93 B.R. 878 (Bankr. E.D. Pa. 1988); *Home Sav. Ass'n v. Guerra*, 733 S.W.2d 134 (Tex. 1987); *Kish v. Van Note*, 692 S.W.2d 463 (Tex. 1985); *Reliance Mortg. Co. v. Hill-Shields*, No. 05-99-01615-CV, 2001 Tex. App. LEXIS 140 (Tex. App. Jan. 10, 2001); *Oxford Fin. Cos. v. Velez*, 807 S.W.2d 460 (Tex. App. 1991); *Green Tree Acceptance, Inc. v. Pierce*, 768 S.W.2d 416 (Tex. App. 1989); see also *Pulliam v. HNL Auto. Inc.*, 60 Cal. App. 5th 396, 274 Cal. Rptr. 3d 547, 559-67 (Cal. Ct. App. 2021), review granted, 484 P.3d 564, 277 Cal. Rptr. 3d 323 (Cal. Apr. 28, 2021) (No. S267576) (concluding that Holder Rule does not limit attorney fee recovery from holder; rejecting contrary position attributed to FTC and ruling that such an agency interpretation would not be entitled to deference).

² See, e.g., *Spikener v. Ally Fin., Inc.*, 50 Cal. App. 5th 151, 162, 263 Cal. Rptr. 3d 726, 735 (Cal. Ct. App. 2020) (concluding statements by the Commission in 2019 (84 Fed. Reg. 18,711, 18,713 (May 2, 2019)) demonstrate "clear intent" to preempt attorney fee recovery "regardless of whether state claim being asserted pursuant to the Holder Rule contains fee-shifting provisions", but declining to express opinion on whether costs are preempted for the same reason); Order on Motion, *Reyes v. Beneficial State Bank*, No. BCV-17-100082 (Cal. Sup. Ct., Kern Co., Dec. 5, 2019), appeal docketed, No. F080827 (Cal. Ct. App. Feb. 13, 2020) (ruling state statute is preempted by Commission statements on application of Holder Rule to attorney's fees); see also *Lafferty v. Wells Fargo Bank, NA*, 25 Cal. App. 5th 398, 414-16, 275 Cal. Rptr. 3d 842, 855-57 (Cal. Ct. App. 2018) (concluding that second sentence of the Holder Rule Notice caps attorneys' fees claim against defendant-holder unless "another state or local cause of action can be found to support such a claim," but that costs are not subject to the same cap).

³ See 40 Fed. Reg. 53,506, 53,507-08 (1975) (use of promissory notes and waiver of defense clauses in seller-financed sales); *Id.* at 53,514-15 (use of "vendor-related" or "direct" loans by

sellers' use of these practices to foreclose consumer claims and defenses constitutes an unfair practice under Section 5 of the FTC Act.⁴ To preserve consumers' claims and defenses, the Holder Rule requires a seller that finances sales to include in credit contracts the following provision, also known as the "Holder Rule Notice":

ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED PURSUANT HERETO OR WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER.

16 C.F.R. § 433.2(a). Where the seller is not the creditor, but receives payment from the proceeds of a loan by a creditor that has a referral or business relationship with the seller (defined in the Rule as a "Purchase Money Loan"), the consumer credit contract must have the same provision, except the words "PURSUANT HERETO OR" are omitted. *Id.* § 433.2(b). A creditor or assignee of credit contracts with the Holder Rule Notice is thus subject to any claims or defenses that the consumer could assert against the seller.

Analysis. The Holder Rule does not eliminate any rights the consumer may have as a matter of separate state, local, or federal law. Consequently, whether costs and attorneys' fees may be awarded against the holder of the credit contract is determined by the relevant law governing costs and fees.⁵ Nothing in the Holder Rule states that application of such laws to holders is inconsistent with Section 5 of the FTC Act or that holders should be wholly or partially exempt from these laws.

third party) (1975); *see also* FTC, Statement of Enforcement Policy, 41 Fed. Reg. 34,594, 34,596 (1976). (explaining affiliation and referral standards applicable to "transactions in which a seller accepts the proceeds of a loan extended directly from a lender to a purchaser.").

⁴ 40 Fed. Reg. at 53,523.

⁵ States have passed varying laws regarding recovery of attorneys' fees and costs under which responsibility to pay fees may depend a variety of factors. *Compare* ALASKA R. CIV. P. 82(a) (2021) ("Except as otherwise agreed to by the parties, the prevailing party in a civil case shall be awarded attorney's fees calculated under this rule"); WASH. REV. CODE § 4.84.330 (2021) (if a contract provides for fees to one party, the prevailing party is entitled to fees); KY. REV. STAT. Ann. § 367.220(1) (West 2015) (court may award attorneys' fees and costs to prevailing party in any action under Kentucky Consumer Protection Act), *with* WASH. REV. CODE § 4.84.185 (court may award fees incurred in opposing claims or defenses that court finds were "frivolous and advanced without reasonable cause"); COLO. REV. STAT. § 6-1-113(2)(b) (2021) (in successful action to enforce liability, "person who is found to have engaged or caused another to engage in" deceptive trade practice is liable for costs and attorney fees).

Further, if the applicable law requires or allows costs or attorneys' fee awards against a holder, the Holder Rule does not impose a cap on such an award. The sentence in the Holder Rule Notice that limits recovery to "amounts paid by the debtor" applies only to monetary recovery against holders based on the Holder Rule Notice (*i.e.*, recovery on the claims or defenses the debtor could assert against the seller); the Rule places no cap on a consumer's right to recover from the holder for other reasons. Thus, for example, in an action between a consumer and a holder, if the applicable law authorizes the consumer to recover costs or fees from parties that unsuccessfully oppose the consumer's claims or defenses, a prevailing consumer's right to recovery against the holder is not restricted by the Holder Rule Notice. In this scenario, the cost or fee award is separate and supported by a law that is independent of the Holder Rule. Thus, the Holder Rule Notice does not limit costs or attorneys' fees that the applicable law directs or permits a court to award against a holder because of its role in litigation.

In a situation where the applicable law permits assessing costs or attorneys' fees exclusively against the seller, the seller's liability for such costs and fees may be raised against the holder because of the Holder Rule Notice. The holder's obligation to pay costs or fee awards available exclusively against the seller, however, would be limited to the amount paid by the consumer. Thus, for example, if a consumer is awarded fees in a suit solely against the seller, or the law allows awards only against a seller that has engaged in specified conduct, the Holder Rule Notice authorizes the consumer to recover such an award from the holder up to the amount paid. The consumer also may rely on a claim against the seller for costs or attorneys' fees to offset an obligation to the holder.

Some courts have read the Commission's statements in a 2019 Rule Confirmation notice regarding the Holder Rule as mandating a different result.⁶ Insofar as these decisions conclude that the Holder Rule precludes state law from providing for costs or attorneys' fees against the holder, they misconstrue the Commission's statements. Neither the Rule itself nor the 2019 Rule Confirmation notice say that the Holder Rule invalidates state law or that there is a federal interest in limiting state remedies. To the contrary, the 2019 Rule Confirmation says that nothing in the Holder Rule limits recovery of attorneys' fees if a federal or state law separately

⁶ *Supra* note 2.

provides for recovery of attorneys' fees independent of claims or defenses arising from the seller's misconduct.⁷

By direction of the Commission.



April J. Tabor
Secretary

⁷ We have previously observed that the Holder Rule Notice does not limit the availability of injunctive relief against a holder: “The final sentence of the Holder Rule Notice does not restrict the types of remedies available when a claim or defense is preserved; it simply states that the money that a consumer may obtain from a holder based on the Notice may not exceed amounts paid. The Commission affirms that the plain language of the Rule does not limit the types of relief a court may award against a holder.” 84 Fed. Reg. at 18,713 n.32.

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen years and not a party to the within action; my business address is 1800 Century Park East, 8th Floor, Los Angeles, CA 90067-1501.

On February 2, 2022, I served the following document(s) described as **SUPPLEMENTAL BRIEF OF TD BANK, N.A. (TD AUTO FINANCE LLC MERGED INTO AND WITH TD BANK, N.A. ON DECEMBER 21, 2021)** on the interested parties as follows:


SEE ATTACHED LIST

- BY MAIL as noted on attached service list:** I am “readily familiar” with the firm’s practice of collection and processing correspondence for mailing with the United States Postal Service. Under that practice, it would be deposited with the United States Postal Service that same day in the ordinary course of business. Such envelope(s) were placed for collection and mailing with postage thereon fully prepaid at , on that same day following ordinary business practices. (C.C.P. § 1013 (a) and 1013a(3))
- BY TRUEFILING as noted on attached service list:** I caused said document(s) to be serviced via electronic service through TrueFiling at the time that I electronically filed this document.
- BY UPLOAD TO ATTORNEY GENERAL WEBSITE as noted on attached service list:** I caused said document(s) to be uploaded to the Office of Attorney General website at Upload Brief or Petition (Business & Professions Code 17209 and 17536.5) | State of California - Department of Justice - Office of the Attorney General

On February 2, 2022, I submitted to TrueFiling an electronic copy of the document to the California Supreme Court, which also satisfies any service requirement to the California Court of Appeal.

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

Executed on February 2, 2022, at Los Angeles, CA.



Sherlynn Hicks

SERVICE LIST

Hallen D. Rosner
Arlyn L. Escalante
Michelle A. Cook
ROSNER, BARRY & BABBITT, LLP
10085 Carroll Canyon Rd., Suite 100
San Diego, CA 92131
858.348.1005 / Fax 858.348.1150
hal@rbblawgroup.com
arlyn@rbblawgroup.com
michelle@rbblawgroup.com
(VIA TRUEFILING)

Attorneys for Respondent
TANIA PULLIAM

Duncan J. McCreary, Esq.
MCCREARY PC
11601 Wilshire Boulevard, 5th Floor
Los Angeles, CA 90025
310.575.1800
djm@mccrearypc.com
(VIA TRUEFILING)

Counsel for Appellants
HNL AUTOMOTIVE, INC. AND TD
AUTO FINANCE LLC

John A. Taylor
Horvitz & Levy LLP
Business Arts Plaza
3601 W. Olive Ave., 8th Floor
Burbank, CA 91505
818.995.0800
jtaylor@horvitzlevy.com
(VIA TRUEFILING)

Pub/Depublication Requestor
HORVITZ & LEVY LLP

Jan T. Chilton
Severson & Werson
One Embarcadero Center. Suite 2600
San Francisco, CA 94111
415.398.3344 / Fax 415.956.0439
jtc@severson.com
(VIA TRUEFILING)

Pub/Depublication Requestor
AMERICAN FINANCIAL
SERVICES ASSOCIATION

William N. Elder, Jr.
Foell & Elder
3818 E. La Palma Ave.
Anaheim, CA 92807
714.999.1100 / Fax 714.630.3300
bill@foellandelder.com
(VIA TRUEFILING)

Pub/Depublication Requestor
CALIFORNIA FINANCIAL
SERVICES ASSOCIATION

Jenos Firouznam-Heidari
Majes S. Sifers
Brett K. Wiseman
Madison Law, APC
17702 Mitchell North
Irvine, CA 9264
949.756.9050 / Fax 949.756.9060
jheidari@madisonlawapc.com
jsifers@madisonlawapc.com
bwiseman@madisonlawapc.com
(VIA TRUEFILING)

Attorneys for Amicus Curiae
WESTLAKE SERVICES, LLC

Aileen McGrath
Sina Safvati
Akin Gump Strauss Hauer & Feld LLP
580 California Street, #1500
San Francisco, CA 94104
amcgrath@akingump.com
ssafvati@akingump.com
(VIA TRUEFILING)

Attorneys for Amicus Curiae
CHAMBER OF COMERCE OF THE
UNITED STATES OF AMERICA

Janet Y Galeria
U.S. Chamber Litigation Center
1615 H Street, North West
Los Angeles, CA 90062
202.463.5337
jgaleria@uschamber.com
(VIA TRUEFILING)

Eliza J. Duggan
Seth E. Mermin
Center for Consumer Law & Economic
Justice
UC Berkeley School of Law
308 Boalt Hall
Berkeley, CA 94720
510.643.3519
ejduggan@law.berkeley.edu
tmermin@law.berkeley.edu
(VIA TRUEFILING)

Attorneys for Amicus Curiae
UC BERKELEY CENTER FOR
CONSUMER LAW AND
ECONOMIC JUSTICE

Hon. Barbara M. Scheper
c/o Clerk of the Court
Los Angeles Superior Court
111 N. Hill Street
Los Angeles, CA 90012
(VIA U.S. MAIL)

Office of the Attorney General
1300 "I" Street
Sacramento, CA 95814-2919
916.445.9555
(VIA UPLOAD TO AG WEBSITE)

STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

Case Name: **PULLIAM v. HNL AUTOMOTIVE**

Case Number: **S267576**

Lower Court Case Number: **B293435**

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: **tgreene@mcguirewoods.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
BRIEF	2022.02.02 TDBNA Supplemental Brief

Service Recipients:

Person Served	Email Address	Type	Date / Time
Jan Chilton Severson & Werson 47582	jtc@severson.com	e-Serve	2/2/2022 5:08:02 PM
Jenos Firouznam-Heidari Madison Law, APC	jheidari@madisonlawapc.com	e-Serve	2/2/2022 5:08:02 PM
Aileen Mcgrath Akin Gump Strauss Hauer & Feld LLP 280846	AMcGrath@akingump.com	e-Serve	2/2/2022 5:08:02 PM
William Elder Foell & Elder 110463	bill@foellandelder.com	e-Serve	2/2/2022 5:08:02 PM
Hallen Rosner Rosner Barry & Babbitt LLP 109740	richard@rbblawgroup.com	e-Serve	2/2/2022 5:08:02 PM
Arlyn Escalante Rosner Barry & Babbitt, LLP 272645	arlyn@rbblawgroup.com	e-Serve	2/2/2022 5:08:02 PM
Leslie Mason Rosner, Barry & Babbitt, LLP	leslie@rbblawgroup.com	e-Serve	2/2/2022 5:08:02 PM
Seth Mermin Public Good Law Center 189194	TMermin@publicgoodlaw.org	e-Serve	2/2/2022 5:08:02 PM
Hallen Rosner Rosner Barry & Babbitt, LLP 109740	hal@rbblawgroup.com	e-Serve	2/2/2022 5:08:02 PM
Eliza Duggan Center for Consumer Law & Economic Justice 312621	ejduggan@berkeley.edu	e-Serve	2/2/2022 5:08:02 PM
Anthony Le	ale@mcguirewoods.com	e-	2/2/2022

McGuireWoods LLP 300660		Serve	5:08:02 PM
Jenos Firouznam-Heidari Madison Law, APC 266257	camaro@madisonlawapc.com	e-Serve	2/2/2022 5:08:02 PM
Lisa Perrochet Horvitz & Levy LLP 132858	lperrochet@horvitzlevy.com	e-Serve	2/2/2022 5:08:02 PM
Tanya Greene McGuireWoods LLP 267975	tgreene@mcguirewoods.com	e-Serve	2/2/2022 5:08:02 PM
Janet Galeria U.S. Chamber Litigation Center	jgaleria@uschamber.com	e-Serve	2/2/2022 5:08:02 PM
Sandra Chao Severson & Werson, PC	ssc@severson.com	e-Serve	2/2/2022 5:08:02 PM
John Taylor Horvitz & Levy, LLP 129333	jtaylor@horvitzlevy.com	e-Serve	2/2/2022 5:08:02 PM
Michelle Cook 319340	michelle@rbblawgroup.com	e-Serve	2/2/2022 5:08:02 PM
Majes S. Sifers	jsifers@madisonlawapc.com	e-Serve	2/2/2022 5:08:02 PM
Brett K. Wiseman	bwiseman@madisonlawapc.com	e-Serve	2/2/2022 5:08:02 PM
Sina Safvati	ssafvati@akingump.com	e-Serve	2/2/2022 5:08:02 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.

2/2/2022

Date

/s/Sherlynn Hicks

Signature

Greene, Tanya L. (267975)

Last Name, First Name (PNum)

McGuireWoods LLP

Law Firm