No. _____

In The
Supreme Court of the United States

JENNY CASASOLA AND BANK OF AMERICA, N.A.,

Petitioners,

vs.

GARY GREENE,

Respondent.

On Petition For Writ Of Certiorari To The California Court Of Appeal, Second Appellate District, Division Five

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

To encourage banks and other financial institutions and their employees to report actual or suspected criminal activity, Congress enacted 31 U.S.C. § 5318(g)(3)(A) as part of the Annunzio-Wylie Anti-Money Laundering Act of 1992 ("§ 5318"). The section states that any financial institution or its employee that "makes a disclosure of any possible violation of law or regulation to a government agency . . . shall not be liable under . . . any constitution, law, or regulation of any State . . . for such disclosure. . . ."

Despite the clarity of the statute's words, there is a well-defined split of opinion as to the section's meaning. The First and Second Circuits have held the statute confers absolute immunity for a disclosure of any possible crime. The Eleventh Circuit and state appellate courts in Arkansas, Louisiana, Texas, and now California have found implicit qualifications in the statutory text, limiting the immunity to disclosures made in good faith, or for pure motives, or only truthful disclosures, or only disclosures about banking or financial transactions. This petition asks the Court to resolve that controversy by answering this question:

Does § 5318 confer (a) absolute immunity for any disclosure of any possible violation of law or regulation, or (b) only qualified immunity, limited to truthful disclosures made in good faith or to disclosures about financial or banking transactions?

PARTIES TO THE PROCEEDING AND RULE 29.6 STATEMENT

The parties to the proceeding in the California Court of Appeal, Second Appellate District, Division Five, whose judgment is sought to be reviewed, are:

- Gary Greene, plaintiff, appellant below, and respondent here.
- Jenny Casasola and Bank of America, N.A., defendants, respondents below, and petitioners here.

Yahaira Reyes, was a defendant and respondent below. The judgment dismissing Greene's claims against her was affirmed on state law grounds. (App. 2 n. 1, 19.) Therefore, she now has no interest in the outcome of this petition.

The City of Los Angeles and its police officers David Lin, Jose Avilla, Jr., Richmond Afful and Misty Goodnight are defendants but were not parties to the appeal.

Bank of America, N.A. is wholly-owned by Bank of America Corporation, a publicly traded corporation. No single shareholder owns 10% or more of Bank of America Corporation's shares.

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Petitioners Jenny Casasola and Bank of America, N.A. ("BofA") respectfully petition this Court for a writ of certiorari to review the judgment of the California Court of Appeal for the Second Appellate District, Division Five, in this case. Review is warranted because the decision below exacerbates an existing and firmly entrenched conflict among the circuits and state courts on the question the petition presents for review. The issue is of widespread importance, as effective law enforcement requires financial institutions' cooperation in voluntarily disclosing suspected crimes. Congress enacted the Annunzio-Wylie Act's immunity provision to assure that cooperation. The existing split of authority thwarts Congress' purpose and jeopardizes the voluntary flow of information on which law enforcement officials and bank regulators depend.

OPINIONS BELOW

The opinion of the Court of Appeal is reported at 216 Cal.App.4th 454, 156 Cal.Rptr.3d 901. Appendix ["App."] 1-20. The California Supreme Court's order denying petitioners' petition for review, App. 26, is not published in the official reports.

The superior court's August 13, 2012 order granting petitioners' Anti-SLAPP motion to strike respondent Greene's complaint and its November 27, 2012 judgment dismissing Greene's action were not published in the official reports. App. 21-25.

JURISDICTION

This Court's jurisdiction is invoked under 28 U.S.C. § 1257(a). The California Court of Appeal filed its opinion on May 16, 2013. App. 1. On June 25, 2013, petitioners timely filed a petition for discretionary review by the California Supreme Court. That court denied the petition on August 28, 2013. App. 26. Petitioners have exhausted all avenues of appeal within California. This petition is filed within 90 days of the California Supreme Court's order denying review.

The Court of Appeal decision denying petitioners immunity granted under a federal law is a final judgment within the meaning of Section 1257(a). *See Cox Broad. Corp. v. Cohn*, 420 U.S. 469, 482-83 (1975). Petitioners' claim to absolute immunity under 31 U.S.C. § 5318(g)(3)(A) has been finally determined, even though the case has been remanded for further proceedings on the merits of Greene's claims and petitioners' other defenses. Whatever the outcome of those proceedings, later review of the federal issue cannot be had as the Court of Appeal opinion will be law of the case and petitioners' absolute statutory immunity from suit will have been lost. *Cox Broad. Corp.*, 420 U.S. at 482; *Nally v. Grace Community Church,* 47 Cal.3d 278, 301, 253 Cal.Rptr. 97, 111, 763 P.2d 948, 962 (1988); *cf., e.g., Mitchell v. Forsyth,* 472 U.S. 511, 525 (1985) ("[D]enial of a substantial claim of absolute immunity is an order appealable before final judgment, for the essence of absolute immunity

is its possessor's entitlement not to have to answer for his conduct in a civil damages action.").

A judgment for petitioners on nonfederal grounds on remand, would render review of the federal issue by this Court unnecessary. However, this Court's reversal of the Court of Appeal decision on the federal issue now will preclude any further litigation on Greene's claims against petitioners. A refusal to review the Court of Appeal decision now may "seriously erode federal policy" for the reasons stated at 19-20, 29-36 below. *See Cox Broad. Corp.*, 420 U.S. at 483.

STATUTORY PROVISION INVOLVED

Plaintiffs claim immunity under Section 1517(b) of the Annunzio-Wylie Anti-Money Laundering Act ("Annunzio-Wylie Act"), 106 Stat. 4059-60 (1992), codified, as amended, at 31 U.S.C. § 5318(g)(3)(A), which provides:

> Any financial institution that makes a voluntary disclosure of any possible violation of law or regulation to a government agency or makes a disclosure pursuant to this subsection or any other authority, and any director, officer, employee, or agent of such institution who makes, or requires another to make any such disclosure, shall not be liable to any person under any law or regulation of the United States, any constitution, law, or regulation of any State or political subdivision of any State, or under any contract or other

> legally enforceable agreement (including any arbitration agreement), for such disclosure or for any failure to provide notice of such disclosure to the person who is the subject of such disclosure or any other person identified in the disclosure.

STATEMENT OF THE CASE

1. Greene went to a branch of Bank of America, N.A. ("BofA") to cash two insurance claim settlement checks drawn on BofA. Greene was not a BofA customer. The teller and her supervisor, Yahaira Reyes, were unable to verify the maker's signature. Frustrated by their delay in cashing the checks, Greene became loudly abusive. In Greene's words, he put Reyes "on blast" to publicly embarrass her.

Approaching Jenny Casasola, the branch manager, Greene continued shouting abuse concerning his treatment by BofA. According to Casasola, Greene balled his fists, threw his arms in the air, and took an aggressive physical stance, shouting: "I am not afraid of the police. I'm going to blow sh*t up. I'm an ex-convict. I deal with heroin addicts. I'm not afraid to blow this place up or break doors."

Casasola called 911, reporting that she had an irate person at the branch threatening to blow sh*t up. The police arrested Greene outside the branch where he had gone to smoke a cigarette. Without petitioners' involvement, the Los Angeles District

Attorney charged Greene with making criminal threats to bomb a bank. Under subpoena, Casasola testified at Greene's preliminary hearing and at his criminal trial. *See* App. 7-10.

At the end of the preliminary hearing, at which he also testified, Greene was bound over for trial, the judge stating that he believed Casasola's testimony.[1] At the end of the prosecution's case in the criminal trial, the judge denied Greene's motion for acquittal for insufficient evidence, stating that he believed there was sufficient evidence for the case to go to the jury and to sustain any resulting conviction on appeal. The jury acquitted Greene.

2. Greene then sued petitioners for malicious prosecution. Greene also sued the City of Los Angeles and its police officers for using excessive force in arresting him.

Petitioners filed an Anti-SLAPP motion, under California Code of Civil Procedure § 425.16, to strike Greene's claims against them. In support of the motion, petitioners submitted evidence of the facts summarized above and argued that Greene's malicious prosecution claim was a SLAPP which could not succeed because 31 U.S.C. § 5318(g)(3)(A) absolutely immunized petitioners' conduct.

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[1] In the judge's words: "I have no reason to find that the witness lied in this case. I don't see a motive for her having to do that. When she said that she heard the defendant say, 'I've got a bomb,' and could blow her up, I believe that testimony. . . ."

In opposition to the motion, Greene denied threatening to blow the bank up or to physically harm any person or property. He introduced evidence to show BofA should have cashed his check promptly, and he claimed Casasola's report to the police was false, made either to remove an irate customer from the bank or to retaliate for his refusal to open a BofA account. *See* App. 4-7.

The superior court granted petitioners' motion and dismissed Greene's action against them with prejudice.

3. On Greene's appeal, the California Court of Appeal noted that the parties agreed Greene's suit fell within the Anti-SLAPP statute's scope, leaving the only issue for appeal whether Greene had demonstrated that his malicious prosecution claim was "both legally sufficient and supported by a sufficient prima facie showing of facts to sustain a favorable judgment if the evidence submitted by the plaintiff is credited." App. 2-3.

Finding Greene had met that burden, the Court of Appeal reversed the judgment of dismissal. The Court rejected petitioners' argument that the Annunzio-Wylie Act's immunity provision "applies to a bank or bank employee's reports of any violation of law," barring Greene's claim. App. 11.

However broadly the Act's immunity provision may apply to "financial" or "banking" transactions, the Court of Appeal held, it "cannot be read to immunize any report to law enforcement, by any bank

'director, officer, employee, or agent.'" App. 11, 13. And, said the court: "The [Annunzio-Wylie] Act contains no clear language manifesting an intention on the part of Congress to preempt California's malicious prosecution laws when a bank employee makes a false report to police in order to quiet an angry customer." App. 13.

4. Petitioners petitioned the California Supreme Court, seeking its discretionary review of the following issue:

> Is § 5318's immunity from civil liability limited to a bank's reports to police about "financial transactions" or to reports made in good faith and for proper motives, as the Court of Appeal held, or does the immunity extend to a "voluntary disclosure of any possible violation of law or regulation to a government agency," whether or not in "good faith," as Congress provided?

The California Supreme Court summarily denied review on August 28, 2013. App. 26.

REASONS FOR GRANTING THE WRIT

The Court should grant review to resolve the well-developed, deeply entrenched conflict among the federal circuits and state courts about the scope of the immunity that the Annunzio-Wylie Act confers on financial institutions and their employees. The First and Second Circuits have held the immunity to

be absolute, not qualified by any requirement that the disclosure be made in good faith. The Eleventh Circuit and state appellate courts in Arkansas, California, Louisiana and Texas disagree, denying immunity to disclosures alleged to be untrue or not made in good faith.

The difference between absolute and qualified immunity is crucial. The former shields a defendant from the need to answer, avoiding the expense, delay, and risk of litigation as well as the risk of liability. The latter is a frail screen which the plaintiff can easily evade by conclusory allegations and the defendant can raise only after discovery and most often only at trial, since "questions of subjective intent so rarely can be decided by summary judgment." *Harlow v. Fitzgerald*, 457 U.S. 800, 816 (1982). In this case, plaintiff created a triable issue simply by denying that he had uttered the bomb threat that the branch manager reported she heard.

Because it deemed the cooperation of financial institutions and their employees critical in the fight against money laundering, terrorism and other abuses of and threats to the nation's financial system, Congress expressly immunized those institutions and their employees from any liability for voluntary disclosures of possible legal violations to governmental authorities. Having done so in many other statutes, Congress knew how to confer that immunity for only good faith disclosures, but consciously chose not to limit the immunity in that or any other manner.

In holding otherwise, the Eleventh Circuit and four states' courts have plainly erred. That error and the enduring conflict on this issue thwarts congressional purpose and undermines the cooperation that the immunity provision is intended to foster. Because plaintiffs can choose to sue in forums that erroneously qualify the statutory immunity, financial institutions and their employees are deterred from voluntarily disclosing suspected crimes even in the First and Second Circuits.

The Court should grant this petition to resolve the well-defined conflict on this issue, to reemphasize the proper interpretation of congressional enactments, and to vindicate federal law and policy in this important area.

I. There Is A Well-Developed Conflict Of Judicial Authority Concerning The Scope Of Annunzio-Wylie Act Immunity

A. Two Circuits Hold That § 5318 Confers Absolute Immunity

In well-reasoned opinions, the Courts of Appeals for the First and Second Circuits have held that § 5318 confers absolute, unqualified immunity.

1. The Second Circuit addressed the issue first in *Lee v. Bankers Trust Co.*, 166 F.3d 540, 544-45 (2d Cir. 1999). On appeal from dismissal of his defamation suit against Bankers Trust Co. for statements made in a suspicious activity report ("SAR") given federal authorities, Lee argued that "Bankers Trust

does not enjoy absolute immunity from liability for statements in the SAR." *Id.* at 543. Instead, Lee contended, "there is immunity only where the disclosures in the SAR were made in good faith." *Id.* at 544.

The Second Circuit rejected Lee's argument, reasoning:

> The plain language of the safe harbor provision describes an unqualified privilege, never mentioning good faith or any suggestive analogue thereof. The Act broadly and unambiguously provides for immunity from *any* law (except the federal Constitution) for *any* statement made in an SAR by *anyone* connected to a financial institution. There is not even a hint that the statements must be made in good faith in order to benefit from immunity. Based on the unambiguous language of the Act, Bankers Trust enjoys immunity from liability for its filing of, or any statement made in, an SAR.

Id. (italics in original).

The Second Circuit also noted that "[a]n earlier draft of the safe harbor provision included an explicit good faith requirement for statements made in an SAR. *See* 137 Cong. Rec. S16,642 (1991). However, the requirement was dropped in later versions of the bill, and was not included in the bill that was eventually enacted by Congress. *See* 137 Cong. Rec. S17,910, S17,969 (1991); 31 U.S.C. § 5318(g)(3)." *Id.*

Though acknowledging the Eleventh Circuit's contrary holding, the Second Circuit concluded "that the safe harbor provision does not limit protection to disclosures based on a good faith belief that a violation has occurred." *Id.* at 545.

2. In *Stoutt v. Banco Popular de Puerto Rico,* 320 F.3d 26, 30-32 (1st Cir. 2003), the First Circuit joined the Second Circuit in rejecting the argument that Annunzio-Wylie Act immunity "should be conditioned upon a finding of good faith on the part of the reporting entity," noting that its holding was supported by "an amicus brief of the Board of Governors of the Federal Reserve System." *Id*. at 30.

Like the Second Circuit, the First Circuit was persuaded by the absence of any express limitation on § 5318's broad grant of immunity, especially because "a good faith requirement is so obvious a possibility for inclusion by Congress . . . and where it would have taken only a simple drafting adjustment." *Id.* at 31. Also, the First Circuit noted, legislative history weighed against implying a good faith limitation on the statutory immunity. An express good faith limitation was included in an early draft of the bill but was removed before enactment, as *Lee* observed. Also, the bill's author had stated the measure "was intended to provide 'the broadest possible exemption from civil liability for the reporting of suspicious transactions.' 139 Cong. Rec. E57-02 (1993)." *Id.*

Finally, the First Circuit noted that compelling policy arguments favored absolute immunity, though

it conceded contrary arguments could also be made. Citing *Harlow,* 457 U.S. 815-16, the court noted that "subjective good faith requirements work against summary judgment, exposing reporters to an increased risk of trial." *Id.* at 32. On the other hand, the risk of false reports was lessened, it observed, both because the disclosures must be made to public officials who "provide their own filter" and because persons making false disclosures are subject to administrative and criminal sanctions. *Id.*

It "is neither novel nor decisive," that § 5318's absolute immunity "means that some 'wrongs' will go unredressed," the First Circuit observed, because "'rights' are regularly limited or defeated by privileges, immunities and other defenses of many kinds." *Id*. at 33 (*citing Harlow,* 457 U.S. at 818-19, and *Cleavinger v. Saxner*, 474 U.S. 193, 199-200 (1985)).[2]

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[2] District courts outside the First and Second Circuits generally follow *Lee* and *Stout* in holding that the Annunzio-Wylie Act immunity is absolute, not qualified by any requirement of good faith. *See Coffman v. Central Bank & Trust Co*., 5:11-cv-00388-KKC, 2012 WL 4433293, at *3-4 (E.D. Ky. Sept. 25, 2012); *Martinez-Rodriguez v. Bank of Am*., No. C 11-06572 CRB, 2012 WL 967030, at *12 (N.D. Cal. Mar. 21, 2012); *Henry v. Bank of Am. Corp*., No. C 09-628 CRB, 2010 WL 431969, at *4-5 (N.D. Cal. Feb. 2, 2010), *aff'd per curiam,* 522 Fed.Appx. 406 (9th Cir. 2013); *Eyo v. United States*, No. 06-6185, 2007 WL 4277511, at *5 (D.N.J. Nov. 29, 2007); *Nieman v. Firstar Bank*, No. C03-411-MWB, 2005 WL 2346998, at *6 (N.D. Iowa Sept. 26, 2005); *Joseph v. Bancorpsouth Bank*, 414 F.Supp.2d 609, 612-13 (S.D. Miss. 2005); *Whitney Nat'l Bank v. Karam*, 306 F.Supp.2d 678, 680 (S.D. Tex. 2004); *Gregory v. Bank One Corp*., 200

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B. One Circuit And Several States Hold § 5318 Confers Only Qualified Immunity

Directly contrary to *Lee* and *Stoutt*, decisions by the Eleventh Circuit and Arkansas, Louisiana, and Texas state appellate courts, hold that the Annunzio-Wylie Act immunity is qualified, extending only to truthful disclosures made in good faith.

1. *Lopez v. First Union Nat'l Bank*, 129 F.3d 1186, 1192-93 (11th Cir. 1997) leads this line of authority. In expounding on the breadth of the Annunzio-Wylie Act's immunity, the Eleventh Circuit nevertheless held the immunity applied only to voluntary disclosures made in good faith:

> The first safe harbor provision protects a financial institution's "disclosure of any possible violation of law or regulation." As the use of the adjective "possible" indicates, a financial institution's disclosure is protected even if it ultimately turns out there was no violation of law. In order to be immune from liability, it is sufficient that a financial institution have a good faith suspicion that a law or regulation may have been violated, even if it turns out in hindsight that none was.

Id. (citation omitted).

F.Supp.2d 1000, 1003 (S.D. Ind. 2002); *see also Rachuy v. Anchor Bank,* No. A09-299, 2009 WL 3426939, at *2 (Minn. Ct. App. Oct. 27, 2009).

The Eleventh Circuit reversed dismissal of Lopez's complaint because its "allegations do not show that First Union had a good faith suspicion that a law or regulation may have been violated." *Id.* at 1193.

2. In *Bank of Eureka Springs v. Evans*, 353 Ark. 438, 451-52, 109 S.W.3d 672, 680 (2003), the Arkansas Supreme Court held that despite its admittedly broad scope, § 5318 does not grant immunity to knowingly false disclosures of purported crimes. In its words:

> We do not agree, however, that Congress intended the Act's safe harbor to give banks such blanket immunity that even malicious, willful criminal and civil violations of law are protected. Importantly, the Act requires there to be a "possible" violation of law – "possible" being the operative word – before a financial institution can claim protection of the statute. . . . [W]e hold that the Bank did not file a report of a "possible violation" of the law but rather acted maliciously and willfully in an attempt to have Mr. Evans arrested and brought to trial on charges it knew to be false. The Act's safe harbor does not apply to this situation.

Id.

3. Recognizing the "split among the federal circuits as to whether the safe harbor provision has a 'good faith' requirement," the Louisiana Court of Appeal chose to follow *Lopez* and *Bank of Eureka*

Springs. Doughty v. Cummings, 28 So.3d 580, 583 (La. Ct. App. 2009). It held that an ex-employee's claims for malicious prosecution and defamation survived attack at the pleading stage since the petition alleged that the bank's disclosures to federal authorities and bank regulators were false (the bank's preliminary analysis had not implicated plaintiff in any wrongdoing) and made for improper motives (to claim coverage under a D & O Liability Bond). *Id.* Assuming those allegations were true, the bank and its officer "were not reporting a possible violation, but were merely seeking financial benefit."[3] *Id.*

4. Two Texas Courts of Appeals reached similar conclusions. In *Walls v. First State Bank*, 900 S.W.2d 117, 123-24 (Tex. App. 1995), writ den. (July 8, 1996), the court reversed a summary judgment for the bank, commenting:

> [E]ven absent a good faith requirement in the statute, there is nothing in it or its legislative history to indicate the drafters intended to clothe banking institutions and their employees with impunity when falsely reporting possible violation of the law. Such a notion, even aside from being foreign to our

[3] On remand, Cummings and the bank unsuccessfully moved for summary judgment, and then unsuccessfully sought discretionary review by the Louisiana Court of Appeal and Supreme Court, and unsuccessfully petitioned for certiorari in this Court. *Cummings v. Doughty*, ___ U.S. ___, 133 S.Ct. 653 (2012).

> principles of law and sense of justice, was dispelled by the stated purpose of § 5318 "to provide the broadest possible exemption from civil liability for reporting of *suspicious* transactions." 139 Cong.Rec. E57-02 (daily ed. Jan. 5, 1993) (statement by Hon. Frank Annunzio) (emphasis supplied).

Following *Walls,* another Texas Court of Appeals reversed another summary judgment for the bank in *Digby v. Texas Bank,* 943 S.W.2d 914, 926-27 (Tex. App. 1997), writ den. (Sept. 18, 1997), finding there was a triable issue of fact as to whether the bank knew, but deliberately withheld, critical mitigating information from its disclosure to the FDIC about a suspected bank fraud. Though it acknowledged that § 5318 "was intended to be broad," the court said, "federal lawmakers could not have contemplated disclosures made where critical mitigating information is deliberately withheld from federal authorities." *Id*. at 927. And, it opined, holding that the bank was not immune in those "unique" circumstances does no "violence to the federal immunity statute." *Id.*

C. California Has Qualified The Immunity And Limited Its Scope

The Court of Appeal opinion which this petition challenges firmly aligns California with the Eleventh Circuit and other state appellate courts restricting the statutory immunity. The opinion holds that Annunzio-Wylie Act immunity does not apply "when a bank employee makes a ***false*** report to police in order

to quiet an angry customer." App. 13 (emphasis added). The immunity is not absolute, the Court of Appeal held. It shields a bank or employee from liability only for "true" disclosures.

Greene denied he threatened to bomb the bank, so, according to the Court of Appeal, Casasola's report to the police might be "false." The factual issue of truth or falsity of the report precluded pretrial disposition based on Annunzio-Wylie Act immunity. *See* App. 15. By contrast, had the Court of Appeal followed *Lee* and *Stoutt*, it would have held that Casasola and BofA were immune under § 5318 whether or not Casasola correctly characterized Greene's statements in her 911 call and later testimony – and so, would have affirmed the judgment dismissing Greene's suit.

The opinion below limits § 5318's scope as well. Stating that the statue must be "viewed in the context of the [Annunzio-Wylie] Act," the opinion holds that "no matter how broadly [the Act's immunity provisions] apply to 'disclosures' concerning financial transactions, they cannot be read to immunize any report to law enforcement, by any bank 'director, officer, employee, or agent.'" App. 13. Casasola's disclosure did not fit within this newly crafted limitation, the Court of Appeal implied, despite the fact it was made in the course of Greene's attempt to cash a check and concerned a threat to bomb a national bank.

The Court of Appeal's erroneous opinion binds all trial courts of the nation's most populous state. *See Auto Equity Sales, Inc. v. Superior Court*, 57 Cal.2d 450, 455, 369 P.2d 937, 940 (1962) ("Decisions of every division of the District Courts of Appeal are binding upon all . . . the superior courts of this state. . . .").

Most suits against financial institutions and their employees for disclosures to government agencies will, like this one, be filed in state court on state law claims. Few of these cases will be removable as they will not arise under federal law, even though § 5318 is raised as a defense. *See Franchise Tax Bd. v. Constr. Laborers Vacation Trust,* 463 U.S. 1, 10-11 & n. 9 (1983). Removal on diversity grounds will also be blocked by naming the reporting bank employee, most often a forum-state citizen, as a defendant. *See* 28 U.S.C. § 1441(b)(2).

Thus, as a practical matter, Congress' writ in this important area will not run to 38 million Americans and the financial institutions that serve that one-eighth of the nation's citizens.

D. The Conflict Is Well-Developed And Ripe For Resolution

The above-noted conflict of authority as to whether the Annunzio-Wylie Act confers absolute, or only qualified, immunity is well-defined and firmly entrenched. Three federal Courts of Appeals have spoken on the issue, as have four states' appellate courts. The arguments on both sides of the controversy

have been adequately aired in the many appellate and lower court opinions on the subject over the past two decades. Those opinions thoroughly examine the statutory text and cull the relevant portions of its legislative history. The pertinent policy arguments have been raised and addressed. Little would be gained from allowing the split to fester longer in the lower courts. The matter is ripe for review now.

Moreover, the existing split of authority prevents § 5318 from fully achieving Congress' goal. Uncertainty about immunity discourages voluntary disclosure of possible legal violations, depriving law enforcement and banking regulators of information and cooperation which § 5318 was intended to foster.

Even in the First and Second Circuits, financial institutions and their employees cannot be assured of the absolute immunity that Congress intended and so may hesitate to volunteer information about suspicious transactions to law enforcement officials. Plaintiffs choose the forum in which they file suit. Often, plaintiffs can pick a jurisdiction that has restricted the immunity when the disclosure concerns multistate transactions or the institution operates in many states. Even within a single state, plaintiffs may file suit in state court to take advantage of the state court's narrow interpretation of § 5318, while naming a local bank employee as a defendant to prevent

removal to a federal court adhering to the *Lee* and *Stoutt* side of the split.[4]

An even more troubling aspect of this split of authority is the hostility state courts have shown this federal immunity statute. While the federal Courts of Appeals are split two to one in favor of absolute immunity, the courts of all four states that have decided the issue have held that § 5318 grants only qualified immunity. The opinion below is a particularly offensive illustration of this hostility, misapplying the assumption that Congress does not "cavalierly" preempt of state law claims or exercises of state police powers to banking, "an area where there has been a history of significant federal presence." *See Watters v. Wachovia Bank, N.A.*, 550 U.S. 1, 10-11 (2007); *United States v. Locke,* 529 U.S. 89, 108 (2000); *cf.* App. 13. State court hostility to federal immunity statutes threatens important federal policy not only in the financial arena but in many others where Congress has also enacted similar laws to encourage citizen cooperation with law enforcement.

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[4] *E.g.,* Arkansas: *compare Bank of Eureka Springs*, 353 Ark. at 451-52, 109 S.W.3d at 680 (following *Lopez*) *with Gibson v. Regions Fin. Corp.*, No. 4:05CV01922 JLH, 2008 WL 110917, at *3 (E.D. Ark. Jan. 9, 2008) (following *Lee* and *Stoutt*); California: *compare Greene*, 216 Cal.App.4th at 463, 156 Cal.Rptr.3d at 909 (following *Lopez*) *with Martinez-Rodriguez*, 2012 WL 967030, at *12; *Henry*, 2010 WL 431969, at *4-5 (following *Lee* and *Stoutt*); Texas: *compare Walls,* 900 S.W.2d at 123-24; *Digby,* 943 S.W.2d at 926-27 (following *Lopez*) *with Whitney Nat'l Bank*, 306 F.Supp.2d at 680 (following *Lee* and *Stoutt*).

In short, there is a well-developed split of authority among the lower courts over the scope of Annunzio-Wylie Act immunity. The conflict has matured and deepened over the course of two decades. Its continued existence thwarts congressional purpose. This Court's resolution of the issue is needed to establish a uniform national rule on this important issue.

II. The Decision Below Is Incorrect; It Thwarts Important Federal Policies And Should Be Reversed

A. Decisions Qualifying The Immunity Misinterpret The Annunzio-Wylie Act

1. "Statutory construction must begin with the language employed by Congress and the assumption that the ordinary meaning of that language accurately expresses the legislative purpose." *Milner v. Dept. of Navy*, 562 U.S. ___, 131 S.Ct. 1259, 1264 (2011); *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 383 (1992); *Park 'n Fly, Inc. v. Dollar Park & Fly, Inc.*, 469 U.S. 189, 194 (1985).

In § 5318, Congress employed language of sweeping breadth, relieving "*any* financial institution" and "*any* director, officer, employee, or agent of such institution" from liability to "*any* person under *any* law or regulation of the United States, *any* constitution, law, or regulation of *any* State or political subdivision of *any* State" for "a voluntary disclosure of *any*

possible violation of law or regulation to a government agency."

No words of qualification or limitation can be found in the section. Instead, § 5318's wording is "deliberately expansive" and "conspicuous for its breadth." *Morales,* 504 U.S. at 384. Congress repeatedly used the word "any" before the section's key nouns to expand its scope. "Read naturally, the word 'any' has an expansive meaning, that is, 'one or some indiscriminately of whatever kind.'" *United States v. Gonzales,* 520 U.S. 1, 5 (1997) (citations omitted).

In § 5318's single sentence, Congress employed "any" 14 times, a sure sign it intended the section to be interpreted broadly. "Five 'any's' in one sentence and it begins to seem that Congress meant the statute to have expansive reach." *United States v. Clintwood Elkhorn Min. Co.*, 553 U.S. 1, 7 (2008). Expansive reach was, indeed, what Congress intended. In Rep. Annunzio's words, the statute was to provide "the broadest possible exemption from civil liability for the reporting of suspicious transactions." 139 Cong. Rec. E57-02 (Jan. 5, 1993); *see Stoutt,* 320 F.3d at 31.

2. The decision below and other opinions qualifying the Annunzio-Wylie Act immunity ignore this Court's admonition to begin statutory construction with the words Congress enacted. *Lopez* interpolated a good faith qualification without explanation or analysis of § 5318's text. *See Lee,* 166 F.3d at 544-45 ("*Lopez* did not explain where the requirement of a

'good faith suspicion' came from, or why it was necessary to its decision."). Similarly, the decision below limits § 5318's immunity to disclosures about "banking" or "financial" transactions, ignoring the statute's clear reference to "a voluntary disclosure of *any* possible violation of law." *See* App. 11, 13; *compare Sornberger v. First Midwest Bank*, 278 F.Supp.2d 935, 940-42 (C.D. Ill. 2002) (applying the Right to Financial Privacy Act's parallel immunity provision, 12 U.S.C. § 3403(c), to a disclosure in connection with a bank robbery).

Congress knows what "any" means and uses the word purposefully in this type of statute to emphasize the intended breadth of immunity. In amending the federal Whistleblower Protection Act, another statute enacted to promote citizen cooperation with law enforcement, Congress deliberately inserted "any" for exactly this purpose:

> The Committee intends that disclosures be encouraged. The . . . courts should not erect barriers to disclosures which will limit the necessary flow of information. . . . For example, it is inappropriate for disclosures to be protected only if they are made for certain purposes or to certain employees or only if the employee is the first to raise the issue. [The Senate bill] emphasizes this point by changing the phrase "a disclosure" to "any disclosure" in the statutory definition. This is

> simply to stress that any disclosure is protected. . . .

S.Rep. No. 100-413, at 13 (1988).

Five years later, congressional committees again chastised the Merit System Protection Board ("MSPB") for failing to accord the Whistleblower Act its intended scope: "Perhaps the most troubling precedents involve the Board's inability to understand that 'any' means 'any.' The WPA protects 'any' disclosure . . . , a cornerstone to which the MSPB remains blind." H.R. Rep. No. 103-769, at 18 (1994); *see also* S.Rep. No. 103-358, at 11 (1994), reprinted in 1994 U.S.C.C.A.N. 3549, 3559.

The Annunzio-Wylie Act was passed in 1992, right between these two Whistleblower Act amendments. Congress used "any" 14 times in § 5318 for the same reason it employed the word in the Whistleblower Act: to stress the statute's intended breadth. Like the MSPB, the court below appeared unable to understand that "any" means "any."

3. Two opinions qualifying the Annunzio-Wylie Act immunity have improperly focused on single words rather than reading § 5318 as a whole. *Bank of Eureka Springs*, 353 Ark. at 451-52, 109 S.W.3d at 680, discovered a good faith limitation hidden in the word "possible." According to that decision, a knowingly false disclosure cannot concern a "possible violation." To the contrary, "possible" does not limit, but rather expands § 5318's scope, "indicat[ing that] a financial institution's disclosure is protected even if it

ultimately turns out there was no violation of law." *Lopez*, 129 F.3d at 1192.[5]

Another state court found a good faith limitation in the word "suspicious," which does not even appear in the statutory text, but only in its sponsor's description of the statute's purpose. *See Walls*, 900 S.W.2d at 123-24; *cf.*, *Chamber of Commerce v. Whiting*, 563 U.S. ___, 131 S.Ct. 1968, 1980 (2011) ("Congress's 'authoritative statement is the statutory text, not the legislative history.' ").

4. Congress could not have meant what § 5318 so plainly says, according to a final pair of decisions limiting that section's protection. In *Digby,* 943 S.W.2d at 927, for example, the court opined that "federal lawmakers could not have contemplated disclosures made where critical mitigating information is deliberately withheld from federal authorities." Likewise, despite § 5318's express exemption from liability under "*any* constitution, law, or regulation of *any* State," the decision below found no "clear language manifesting" a congressional intent "to preempt California's malicious prosecution laws when a bank employee makes a false report to police in order to quiet an angry customer." App. 13.

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[5] *See also Stoutt,* 320 F.3d at 30 (rejecting this "non-literal reading of the statute" and pointing out that "whatever its internal beliefs, the Bank did by any objective test identify a 'possible violation'" in its disclosure).

"Congress did not really mean it" is judicial nullification, not proper statutory interpretation. "Congress 'says in a statute what it means and means in a statute what it says there,' . . . [W]hen 'the statute's language is plain, "the sole function of the courts"' – at least where the disposition required by the text is not absurd – '"is to enforce it according to its terms."'" *Hartford Underwriters Ins. Co. v. Union Planters Bank, N.A.*, 530 U.S. 1, 6 (2000) (citations omitted). No absurdity results from reading § 5318 literally to create an absolute immunity.

5. Congress clearly did mean what it said in the Annunzio-Wylie Act. Like "any," the words "good faith" are well known to Congress. It employed them expressly when it enacted statutes intended to confer only qualified immunity. *See, e.g.,* 6 U.S.C. § 1104(a)(1); 12 U.S.C. §§ 2219e(a), 4642(b); 15 U.S.C. §§ 1681g(e)(7), 1681u(k), 1681v(e), 6502(a)(2); 20 U.S.C. § 1161*l*-4(a); 26 U.S.C.A. § 7609(i)(3); 42 U.S.C. §§ 652(*l*)(2), 16929; 49 U.S.C. § 44941; 50 U.S.C. §§ 436(c)(2), 1861(e). The words "good faith" cannot be found in § 5318. Congress *deleted* those words from an early draft before enacting § 5318's actual text. *See* 137 Cong. Rec. S16,642 (Nov. 13, 1991); *Lee*, 166 F.3d at 544. Again, in clarifying and amending § 5318 in 2001, Congress did not add the words "good faith" or otherwise narrow the statute's scope. Instead, it broadened the immunity so it expressly applies to voluntary as well as mandatory disclosures and to arbitration as well as judicial

proceedings. Pub. L. No. 107-56, § 351, 115 Stat. 272, 320-21 (Oct. 26, 2001).

The immunity provision's context leads to the same conclusion. Under § 5318(g)(1) and implementing regulations, 12 C.F.R. § 21.11(c), (d) (2013), financial institutions are required to submit SARs to the Financial Crimes Enforcement Network ("FinCEN") about known or suspected criminal violations. However, a financial institution may not disclose an SAR – or any information that might reveal whether an SAR was filed or how the institution decided whether to file an SAR – to any third party other than state and local law enforcement agencies. 31 U.S.C. § 5318(g)(2); 12 C.F.R. § 21.11(e), (k)(1) (2013). Qualified immunity is incompatible with this secret reporting system. If sued for having filed an SAR, a financial institution cannot prove its good faith because "it would be prohibited by law both from disclosing the filing or the contents of an SAR. It flies in the face of common sense to assert that Congress sought to impale financial institutions on the horns of such a dilemma." *Lee,* 166 F.3d at 544.

Also, if limited to good faith disclosures, § 5318's immunity would serve little purpose since, in most states, the common law affords at least a qualified privilege for a citizen's report to public authorities of suspected crime. *See, e.g., Zeevi v. Union Bank,* No. 89 Civ. 4637 (MGC), 1992 WL 8347, at *6 (S.D.N.Y. Jan. 29, 1992).

A 2006 law, 15 U.S.C. § 57b-2b, removes any possible doubt that Congress intended § 5318 to confer absolute immunity on financial institutions for voluntary disclosures to governmental authorities. Section 57b-2b(a) immunizes other entities from liability for their voluntary disclosures to the Federal Trade Commission ("FTC") of material they "reasonably believe[ ] is relevant" to a possible unfair or deceptive act or practice. By contrast, section 57b-2b(b) provides that financial institutions "shall, in accordance with section 5318(g)(3) of Title 31, be exempt from liability for making a voluntary disclosure to the Commission of any possible violation of law or regulation. . . ." As notably missing from 15 U.S.C. § 57b-2b(b) as from 31 U.S.C. § 5318(g)(3)(A) is any limitation of the immunity for financial institutions to disclosures made in "reasonable belief" or "good faith." Indeed, the fact that financial institutions are dealt with in a separate subsection of § 57b-2b shows clearly that their immunity is absolute in comparison with the expressly qualified immunity which subsection (a) confers on all other entities.

6. Also entitled to weight in interpreting § 5318 are the unanimous views of the federal agencies charged with implementing the Annunzio-Wylie Act. *See Williamson v. Mazda Motor of America, Inc.*, 562 U.S. ___, 131 S.Ct. 1131, 1139 (2011); *Geier v. Am. Honda Motor Co., Inc.*, 529 U.S. 861, 883-84 (2000). As disclosed in amicus briefs those agencies filed in *Lee, Bank of Eureka Springs,* and *Stoutt,* it is the "fair and considered view" of all four Federal bank supervisory

authorities, as well as FinCEN, that § 5318 provides absolute immunity, not qualified by any need to establish "good faith" or "probable cause."[6] Indeed, as the FRB pointed out in its brief in *Stoutt,* "the Board explicitly rejected the notion that a financial institution should satisfy the legal standard of probable cause before reporting. *See* 61 Fed. Reg. 4338, 4342 (1996) (discussing 12 C.F.R. § 208.20)." *Stoutt* Amicus Br., p. 16.

The decision below and the other opinions qualifying the statutory immunity misinterpret § 5318. The Court should grant the writ to so hold, correcting the growing number of opinions that improperly limit the statute's effect.

B. Decisions Qualifying The Immunity Thwart An Important Congressional Policy

Effective law enforcement depends on help from private individuals and entities. To encourage cooperation with law enforcement efforts, Congress has

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[6] Br. for the Bd. of Governors of the Fed. Reserve Sys. as Amicus Curiae, *Stoutt v. Banco Popular de Puerto Rico,* 2002 WL 34231743, pp. 12-13, 15-16 (1st Cir. May 13, 2002) ("*Stoutt* Amicus Br."); Br. for the Fed. Deposit Ins. Corp. as Amicus Curiae, *Bank of Eureka Springs v. Evans*, 2002 WL 32625039, at *6-7 (Ark. Sept. 5, 2002) ("*Bank of Eureka Springs* Amicus Br."); Br. for the Bd. of Governors of the Fed. Reserve Sys. as Amicus Curiae, *Lee v. Bankers Trust Co.,* 1998 WL 34088671, at *13, 16-17 (2d Cir. July 6, 1998) ("*Lee* Amicus Br.").

enacted a wide variety of statutes to entice voluntary assistance by rewarding those who assist, *see, e.g.,* 15 U.S.C. § 78u-6, protecting whistleblowers and similar volunteers from private retaliation, *see, e.g.,* 5 U.S.C. § 2302(b)(8), and immunizing citizens from civil liability for their voluntary disclosures to authorities, *see* 31 U.S.C. § 5318(g)(3)(A) and statutes cited at p. 26 above.

Nowhere is the need for private cooperation with law enforcement efforts more urgent than in the context of crimes committed against or using the nation's financial systems. In other contexts, the government encourages citizens to report suspected crimes to law enforcement. In this one area, it commands cooperation, requiring financial institutions to file SARs or pay hefty sanctions if they fail to do so. 31 U.S.C. § 5318(g)(1); 12 C.F.R. § 21.11(c), (i); *see Stone ex rel. AmSouth Bancorporation v. Ritter,* 911 A.2d 362, 365 (Del. 2006) (In 2004 AmSouth was fined $50 million for failing to file SARs); *In re TD Bank, N.A.*, No. 2013-142 (O.C.C. Sept. 20, 2013) (consent order assessing $37.5 million civil penalty for failure to file SARs). About 1.4 million SARs were filed in 2011 alone. FinCEN Annual Rep.: Fiscal Year 2011, pp. 7, 8.

Law enforcement officials and bank regulators lack the resources to monitor the millions of transactions flowing through the nation's banking system on a daily basis. To protect the banking system and its depositors from illegal activities, such as money laundering, drug trafficking, terrorism, theft, embezzlement, and fraud; assaults on bank data security,

hacking of computer systems and websites, bank robbery and a myriad of other crimes involving the nation's financial systems and its federally regulated and insured institutions, law enforcement and bank regulators must depend on financial institutions' cooperation. *See, e.g., The 314(b) Program A Decade of Information Sharing: Stronger than Ever*, 23 SAR Activity Rev. – Trends, Tips & Issues 41, 51 (FinCEN May 2013).

> Financial institutions serve as the first line of defense when malefactors attempt to use the banking system to commit crimes or commit unsafe or unsound practices. Financial institutions are in the best position to know when crimes are being committed against them or when they are being used as a vehicle for the furtherance of criminal activity. [Para.] In view of these factors, financial institutions are encouraged to report evidence of suspicious transactions liberally. Financial institutions are not expected to act as quasi-judicial finders of fact, or to resolve doubts as to the legality of a given transaction [before reporting suspected crime].

Lee Amicus Br.*,* 1998 WL 34088671, at *11-12.

"Any impediments to the willingness of financial institutions to report suspicious activity would weaken law enforcement's ability to investigate possible criminal activity and threaten the ability of bank supervisory authorities to protect the safety and soundness of the country's financial system." *Bank of*

Eureka Springs Amicus Br., 2002 WL 32625039, at *4-5 (Ark. Sept. 5, 2002).

The threat of litigation and the risk of liability for what may turn out to be an unfounded suspicion of criminal activity stands as a substantial impediment to the willingness of financial institutions and their employees to report suspicious activities. The Annunzio-Wylie Act's immunity provision was enacted to remove that impediment to the cooperative and voluntary flow of information that Congress sought to foster between financial institutions, law enforcement officials, and bank regulators. In drafting § 5318, its author "was deeply concerned that financial institutions should be free to report suspicious transactions without fear of civil liability." 139 Cong. Rec. E57-02 (Jan. 5, 1993). As already noted, the section was broadened in 2001 to extend its protections to voluntary disclosures in addition to disclosures by required SARs and those pursuant to other governmental authority. Pub. L. No. 107-56, § 351.

The statute serves as an effective inducement for the voluntary reporting of suspected crimes only if it blocks a suit at the outset. An immunity enforceable only after a full trial does little good. The cost of litigating a case through trial and the risk of an adverse decision will deter many financial institutions and their employees from reporting suspicious circumstances – even if, in the end, a verdict or judgment is rendered in their favor based on the immunity statute. *See Mitchell*, 472 U.S. at 525-26.

> The *Lopez* interpretation of [§ 5318] creates a hazardous shoal in the safe harbor. Any customer or employee of a financial institution who imagines that he or she was mentioned in an SAR could simply accuse the financial institution of bad faith or defamation and force it to defend itself in a lengthy and costly lawsuit. Such allegations are difficult to dismiss on motion practice, because allegations of defamation or bad faith require a factual determination about the intent of the reporting financial institution

Stoutt Amicus Br., p. 18.

As the decisions following *Lopez* illustrate, the qualified immunity they adopt inevitably requires trial in most seriously contested cases – those in which the subject of the bank disclosure has been acquitted or otherwise cleared of criminal charges. As the disclosure proved inaccurate, the plaintiff can usually frame a complaint that survives attack at the pleading stage[7] and raise a triable issue regarding the defendant's good faith so as to avoid summary judgment or other pretrial disposition. It can be as easy as declaring "I did not say that" – as Greene did in this

[7] *See Lopez,* 129 F.3d at 1193 ("The problem for First Union at this stage of the litigation is that it is stuck with the allegations of the complaint. Those allegations do not show that First Union had a good faith suspicion that a law or regulation may have been violated. None of the allegations indicate that the transactions associated with Lopez's account were suspicious enough to suggest a possible violation of law.").

case. *See* App. 14-15. Not surprisingly, two of the decisions following *Lopez* reverse dismissals at the pleading stage,[8] three reverse summary judgments or equivalent pretrial dispositions,[9] and the last affirms a jury verdict against the bank.[10] As this Court recognized in a different context, when immunity turns on the defendant's subjective good faith, cases cannot be resolved before trial with all its risk, expense and distraction. *See Harlow*, 457 U.S. at 816-17; *see also Stoutt,* 320 F.3d at p. 32 ("[S]ubjective good faith requirements work against summary judgment, exposing reporters to an increased risk of trial.").

Though a rare handful of the persons mentioned in the 1.4 million SARs filed annually, and the myriad voluntary disclosures of suspected crime, the wrongly accused are natural subjects of judge and jury sympathy. Financial institutions are not. Few of those institutions will be willing to risk trial and the threat of a large compensatory and punitive damage award. So institutions will settle most of these cases that survive pre-trial motion practice. The cost of those settlements will affect the institutions' willingness to

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[8] *Lopez,* 129 F.3d at 1194, 1196; *Doughty*, 28 So.3d at 583. As already noted, on remand in *Doughty*, summary judgment was denied as well. *See* p. 15 n. 3 above.

[9] *Greene*, 216 Cal.App.4th at 463, 156 Cal.Rptr.3d at 909; *Digby,* 943 S.W.2d at 926-27; *Walls*, 900 S.W.2d at 123-24.

[10] *Bank of Eureka Springs*, 353 Ark. at 451-52, 109 S.W.3d at 680 (affirming jury award of $100,000 compensatory damages and $300,000 punitive damages).

volunteer information in the future. An immunity that protects only when the institution proves, to a jury's satisfaction, that it acted in good faith in disclosing information to law enforcement offers no practical shield and hence does not encourage voluntary disclosure.[11]

Financial institutions' employees are even more likely to be deterred from reporting suspected crimes if threatened with litigation and possible personal liability. Casasola has already endured the unwelcome and frightening prospect of twice being compelled to testify against and confront, in close quarters, the man she is convinced threatened her with physical harm. She is terrified of having to repeat that experience at deposition and trial. Casasola must also face litigation's normal inconveniences and distractions, an emotionally wrenching trial, and the risk of ruinous personal liability. She will think more than twice before calling 911 again.

Thus, the decisions qualifying the Annunzio-Wylie Act immunity thwart an important congressional policy. Moreover, as already noted, *see* pp. 19-20

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[11] *See Hasie v. Office of Comptroller of Currency*, 633 F.3d 361, 368-69 (5th Cir. 2011) ("The OCC concluded that disclosing the SARs to aid a private litigant in proving a case against a bank 'may adversely affect timely, appropriate and candid reporting by institutions. If institutions believe that information in a SAR can be used for purposes unrelated to law enforcement purposes, they will have an incentive to adjust the nature of their reporting to respond to the risks they perceive from the other uses.' ").

above, those decisions have that untoward effect even in the First and Second Circuits, despite their contrary decisions, because plaintiffs can choose to sue in other jurisdictions that erroneously qualify the statutory immunity. The Court should grant this petition to resolve the conflict on this important issue and to assure full implementation of Congress' purpose in this area crucial to effective law enforcement.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF
THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

GARY GREENE, Plaintiff and Appellant, v. BANK OF AMERICA et al., Defendants and Respondents.	B243638 (Los Angeles County Super. Ct. No. BC478655)

APPEAL from a judgment of the Superior Court of Los Angeles County.

Frank Johnson, Judge. Affirmed in part; reversed in part.

Akudinobi & Ikonte, Emmanuel C. Akudinobi, Chijioke O. Ikonte for Plaintiff and Appellant.

Severson & Werson, Jan T. Chilton, Andrew S. Elliott for Defendants and Respondents.

Plaintiff and appellant Gary Greene received two checks from State Farm, in settlement of a claim. He went to a Bank of America branch (the Bank) and attempted to cash the checks, which were made out to him and drawn on State Farm's Bank of America

account. The Bank refused to cash the larger of the two checks and, after a time, the branch manager called police and said that plaintiff had threatened to blow up the Bank. Police responded and arrested plaintiff. He was charged with a violation of Penal Code section 422 and was acquitted after jury trial.

Plaintiff sued the Bank and the branch manager, Jenny Casasola,[1] for malicious prosecution. Judgment was entered in respondents' favor after their special motion to strike (Code Civ. Proc., § 425.16) was granted. We reverse.

Special Motions to Strike

"When a special motion to strike is filed, the initial burden rests with the defendant to demonstrate that the challenged cause of action arises from protected activity." (*Brill Media Co., LLC v. TCW Group, Inc.* (2005) 132 Cal.App.4th 324, 329.)

The parties agree that defendants met their initial burden. We thus focus on the next step. Once defendants show that the cause of action arises from protected activity, the plaintiff must demonstrate a probability of prevailing on the claim. (*Equilon Enterprises v. Consumer Cause, Inc.* (2002) 29 Cal.4th 53, 67.)

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[1] Plaintiff sued another bank employee, Yahaira Reyes. Judgment was entered in her favor, but plaintiff makes no argument concerning her on appeal. Judgment in her favor is thus affirmed.

In making the showing, "a plaintiff . . . must set forth evidence that would be admissible at trial. [Citation.] Precisely because the statute (1) permits early intervention in lawsuits alleging unmeritorious causes of action that implicate free speech concerns, and (2) limits opportunity to conduct discovery, the plaintiff's burden of establishing a probability of prevailing is not high: We do not weigh credibility, nor do we evaluate the weight of the evidence. Instead, we accept as true all evidence favorable to the plaintiff and assess the defendant's evidence only to determine if it defeats the plaintiff's submission as a matter of law. (*Ibid*.) Only a cause of action that lacks 'even minimal merit' constitutes a SLAPP. [Citation.]" (*Overstock.com, Inc. v. Gradient Analytics, Inc.* (2007) 151 Cal.App.4th 688, 699-700.)[2] "Put another way, the plaintiff 'must demonstrate that the complaint is both legally sufficient and supported by a sufficient prima facie showing of facts to sustain a favorable judgment if the evidence submitted by the plaintiff is credited.' [Citations.]" (*Wilson v. Parker, Covert & Chidester* (2002) 28 Cal.4th 811, 821.)

Whether Code of Civil Procedure section 425.16 applies is a legal question which we review independently on appeal. (*ComputerXpress, Inc. v. Jackson* (2001) 93 Cal.App.4th 993, 999.)

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[2] Given this standard, we must ignore the many portions of defendants' brief which argue the case as if the only facts were the facts it proposed.

Evidence

Plaintiff's trip to the Bank began with a teller, who told him that she could cash the smaller of his two checks, which was for $40, but not the larger check, which was for $7,250.97. For that, she needed authorization from her supervisor, Yahaira Reyes. Reyes either could not or would not cash the larger check. Plaintiff then talked to the branch manager, Casasola. It was Casasola who called the police and said that plaintiff was threatening to blow up the Bank. Plaintiff was outside the Bank, smoking a cigarette and waiting for his checks to be verified, when he was arrested. That much, plaintiff and defendants agree on.

Defendants submitted evidence with their motion to strike, and plaintiff submitted evidence with his response to that motion; their accounts of the events differ.

Plaintiff declared that on February 25, 2010, he picked up two checks from the Woodland Hills office of his car insurer, State Farm. Both were on State Farm's Bank of America account, and they were signed by the same person. The State Farm employee who gave him the checks told him that he could cash the checks at the Bank of America branch nearby on Canoga Avenue, and that the checks were "pre-approved and easily verifiable based on a long standing agreement between State Farm and Bank of America."

Plaintiff went to the branch the State Farm employee recommended and waited in line for a teller. The teller told him that since he did not have a Bank of America account, the Bank would charge him to cash the checks. He knew that that might be the case, and told her that he did not have a problem with that. At the teller's request, he endorsed the checks. The teller then said that she could cash the smaller check, but that the larger check needed approval from her supervisor.

The supervisor, Reyes, came to the window and said that she could not cash the check unless plaintiff opened an account. Plaintiff told her that he did not want to open an account, that he needed the money right away (he had arranged to buy a car), and that State Farm had told him that the checks were preapproved. Reyes said that she could not verify the signature on the larger check and that he would have to deposit it.

Plaintiff called State Farm and told a claims adjuster, Charles Gonzalez, what was going on. Gonzalez asked to speak to Reyes, but she refused to talk to him or to give plaintiff her phone number, so that Gonzalez could call her. Plaintiff was able to get Reyes's business card from the teller. He gave Reyes's phone number to Gonzalez, and shortly thereafter heard Reyes's phone ring.

Plaintiff submitted State Farm's records concerning the call. Gonzalez wrote that he spoke to Reyes and told her that he could verify the check, specifying

the check number, amount, and the name of the employee who had signed it. Reyes said that the Bank had copies of the signatures of all State Farm employees who could issue checks, and that she could not match the signature on plaintiff's check. Gonzalez expressed skepticism, never having had any similar problem before. Reyes simply repeated that she could not verify the signature.

Plaintiff declared that while Reyes was on the phone and afterward, he took a seat in the lobby and waited, but after an "appreciable time" got up and asked Reyes about his money. She ignored him. He asked for his checks back. She ignored him. Plaintiff complained, telling her that he was going to talk to her manager and call the police, who would make her give him his checks.

Reyes continued to ignore him. Plaintiff then sought out Casasola, the branch manager. Casasola was talking to another dissatisfied customer. Plaintiff was frustrated and "began venting" about the bad customer service at the Bank. He did not, however, threaten anyone, or make any threat about blowing up the Bank.

Plaintiff declared that while he waited for Casasola to finish speaking to the other customer, he saw Reyes approach Casasola's desk and give Casasola his checks. When he finally was able to speak to Casasola, he told her that he wanted to cash the checks and gave her his identification and Gonzalez's phone number. She promised to take care

of the problem. Plaintiff thanked her and asked for permission to wait outside, so that he could smoke. Casasola agreed. Plaintiff went outside to smoke. He was outside, smoking, when police arrived and arrested him.

Plaintiff declared that he never balled up his fists, or threatened any person or bank property with physical harm.

According to Reyes's and Casasola's declarations, Reyes sought to verify the signature on the check, using a specified bank system, but could not do so. Plaintiff became "highly agitated," raised his voice, called Reyes a "bitch," and threatened to cause a commotion. Plaintiff then approached Casasola.

Casasola declared that she asked plaintiff to wait, and when he would not, got the checks from Reyes, whom she observed to be "visibly upset" and "on the verge of tears." Casasola then told plaintiff to sit down, calm down, and lower his voice. He stood about 10 feet away from her and shouted threats, saying that he was not afraid of the police, that he was "going to blow shit up," that he was an ex-convict, and that he was not afraid to blow the place up or break the doors. As he was making these threats, he was balling his fists, throwing his arms in the air, and taking "an aggressive physical stance."

It was at this time that Casasola called police.

In the 911 call, Casasola said that plaintiff was in the Bank branch and "he's saying he can blow 's' up if

I don't help him he's going to do that. I need a unit over here, please." She said that plaintiff was "threatening associates," and that he had "threatened to blow up the Bank" and to break her glasses (or break the glass) as he left the Bank. The dispatcher got plaintiff's description and Casasola's name, and told her that "if anything changes call us back." The dispatcher also asked if Casasola had plaintiff's name. She said, "No, but I can get it as soon as I sit down with him."

Casasola did sit down with plaintiff, who, according to her declaration, calmed down and sat at her desk. Casasola left plaintiff, went to Reyes's work station, and told her to continue trying to verify the checks. At that point, plaintiff told Casasola that he was going outside to smoke.

After plaintiff posted bail, he took the checks (which police had retrieved and given to him) to another bank branch, where the manager verified the checks by calling a bank hotline. Plaintiff had his cash in less than five minutes.

Plaintiff also submitted Casasola's testimony in the criminal proceedings. At the preliminary hearing, Casasola testified that plaintiff said, "If you don't cash this check for me, I am not afraid to blow up this place" and that plaintiff said that he would blow up the banking center if she did not cash his check. She also testified that after she called police she sat with plaintiff at her desk, and that in the five to seven minutes it took for police to arrive, she was worried

about her safety and the safety of others in the Bank. She did not, however, evacuate the Bank, warn customers or employees, look for security guards who might help, or lock the doors after plaintiff went outside. She also testified that she needed to verify the larger check because it was for an amount in excess of $10,000.

In addition to the evidence previously summarized, defendants submitted a portion of plaintiff's preliminary hearing transcript in which he testified that while he was at the Bank, he said, in a loud voice, that he was so frustrated that he felt like kicking over a cardboard display in the Bank, although he did not go near the display. He also testified that he had "yelled at the teller," "mouthed off," and "abused the peace of the Bank," explaining that he abused "the tranquility," and that "I was loud," but that he did not call anyone names. He also testified that when Reyes refused to give his checks back, he told her, "you are afraid that I will complain about you; . . . you have control issues." He was trying to put her "on blast," or embarrass her for providing bad customer service.[3]

Defendants also submitted a different portion of the trial transcript, where an unidentified witness, presumably a police officer, testified that when the

[3] Defendants at times argue that plaintiff testified that at the Bank, he spoke of a "blast," but that is not the state of the evidence.

witness spoke to Casasola, she was visibly shaken, so that the witness had to advise her to take a deep breath, and that "it's okay, we're here."

Discussion

Defendants' motion argued that plaintiff could not prevail on the merits because they were immune from suit under the The Annunzio-Wylie Anti-Money Laundering Act, and because plaintiff did not present prima facie proof of malicious prosecution.

1. *The Annunzio-Wylie Anti-Money Laundering Act, 31 United States Code section 5318(g)*

"Congress enacted the Annunzio-Wylie Anti-Money Laundering Act in order to facilitate cooperation between domestic financial institutions and the United States government to stop the global movement of drug money. Large criminal enterprises depend on their ability to conceal the proceeds of their criminal endeavors, and the Annunzio-Wylie Act seeks to make concealment much more difficult by encouraging financial institutions to disclose suspicious activity and cooperate with law enforcement efforts. But, because disclosure of financial information – either spontaneously or after a request from the government – could possibly lead to litigation with disgruntled customers . . . , the Annunzio-Wylie Act granted immunity to banks making disclosures." (*Coronado v. BankAtlantic Bancorp, Inc.* (11th Cir. 2000) 222 F.3d 1315, 1319;

Union Bank of California, N.A. v. Superior Court (2005) 130 Cal.App.4th 378.)

Thus, 31 United States Code section 5318(g) "Reporting of suspicious transactions" provides, under the heading "(3) Liability for disclosures": "Any financial institution that makes a voluntary disclosure of any possible violation of law or regulation to a government agency or makes a disclosure pursuant to this subsection or any other authority, and any director, officer, employee, or agent of such institution who makes, or requires another to make any such disclosure, shall not be liable to any person under any law or regulation of the United States, any constitution, law, or regulation of any State or political subdivision of any State, or under any contract or other legally enforceable agreement (including any arbitration agreement), for such disclosure or for any failure to provide notice of such disclosure to the person who is the subject of such disclosure or any other person identified in the disclosure."

Defendants do not contend that this case involves a suspicious transaction, or disclosure of financial information. Instead, their argument is that the Annunzio-Wylie Act (the Act) applies to a bank or bank employee's reports of any violation of law. In support, they cite cases which hold that the Act applies to disclosures of matters other than money laundering. However, the cited cases do not hold that the Act applies to situations like the one before us, which have nothing to do with banking transactions.

For instance, *Lopez v. First Union Nat'l Bank* (11th Cir. 1997) 129 F.3d 1186, held that a bank's disclosure of electronic fund transfers and information held in electronic storage was "not outside the scope" of the Act, and that "the three safe harbors provided by § 5318(g)(3) supply an affirmative defense to claims against a financial institution *for disclosing an individual's financial records or account-related activity.*" (*Id*. at p. 1191, italics added.)

Stoutt v. Banco Popular de P.R. (1st Cir. 2003) 320 F.3d 26, held that under the Act, a bank which informed the FBI of a suspicion that a borrower had engaged in a check-kiting scheme, a violation of federal bank fraud laws, was immune from tort liability. In *Nevin v. Citibank, N.A.* (S.D.N.Y. 2000) 107 F.Supp.2d 333, a department store security guard suspected that a customer was using a stolen credit card. He called the bank which issued the card, and the bank "authorized" the store to detain the customer and said that the card might be stolen. The store called police, who investigated by going to the customer's house. She sued for slander, infliction of emotional distress, and other causes of action. The bank claimed the protection of the Act, but the district court found that although the Act "encompasses the complete ambit of criminal behavior, *whether money laundering by international drug kingpins or credit card fraud at a shopping mall*," the bank was not immune, because the communication was between the bank and a private entity, the store. (*Id*. at p. 341, italics added.) *Coronado v. BankAtlantic*

Bancorp, Inc., supra, 222 F.3d 1315, concerns a bank's compliance with facially valid grand jury subpoenas for customer records.

The immunity provisions of the Act must be viewed in the context of the Act and, no matter how broadly they apply to "disclosures" concerning financial transactions, they cannot be read to immunize any report to law enforcement, by any bank "director, officer, employee, or agent." Indeed, the Supreme Court recently reiterated the principle that, "'[i]n all pre-emption cases, and particularly in those in which Congress has "legislated . . . in a field which the States have traditionally occupied," . . . we "start with the assumption that the historic police powers of the States were not to be superseded by the Federal Act unless that was the clear and manifest purpose of Congress."' [Citations.]" (*Wyeth v. Levine* (2009) 555 U.S. 555, 565.) The Act contains no clear language manifesting an intention on the part of Congress to preempt California's malicious prosecution laws when a bank employee makes a false report to police in order to quiet an angry customer.

2. *Prima facie case for malicious prosecution*

Defendants first argue that plaintiff will not be able to prevail on the merits because he cannot prove that the action was commenced at their direction. The

relevant law is clear:[4] "One may be civilly liable for malicious prosecution without personally signing the complaint initiating the criminal proceeding." (*Centers v. Dollar Markets* (1950) 99 Cal.App.2d 534, 544.) "The test is whether the defendant was actively instrumental in causing the prosecution." (*Sullivan v. County of Los Angeles* (1974) 12 Cal.3d 710, 720; 5 Witkin, Summary of Cal. Law (10th ed. 2005) Torts, § 476.) "Cases dealing with actions for malicious prosecution against private persons require that the defendant has at least sought out the police or prosecutorial authorities and falsely reported facts to them indicating that plaintiff has committed a crime." (*Sullivan v. County of Los Angeles, supra,* at p. 720.)

Defendants' argument is that California law does not hold a citizen responsible for initiating criminal proceedings unless he or she knowingly reported false facts to the police. They argue that plaintiff has no evidence that Casasola knowingly lied. In defendants' view, plaintiff's own declaration that he never made any threat, let alone a threat to blow up the Bank, is not enough to prove a likelihood of success, but merely creates a "he said, she said," situation which provides no basis for a finding that Casasola lied.

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[4] Defendants are not assisted by their citation to a New York case which holds that "'"[t]he mere reporting of a crime to police and giving testimony are insufficient"' to show a defendant's initiation of a criminal proceeding. [Citation.]" (*Du Chateau v. Metro-North Commuter R.R. Co*. (N.Y. App. Div. 1999) 253 A.D.2d 128, 131 [688 N.Y.S.2d 12].) Whatever the merits of that rule in New York, it is not a correct statement of California law.

Defendants mistake the applicable legal standard. In response to the special motion to strike, plaintiff presented his declaration that he never threatened to blow up the Bank, and on our review, we must "accept as true all evidence favorable to the plaintiff." (*Overstock.com, Inc. v. Gradient Analytics, Inc., supra,* 151 Cal.App.4th at pp. 699-700.) Thus, "he said" is a prima facie case, and in this case, he said that Casasola told police that he threatened to blow up the Bank, although he had made no such statement. As defendants concede, they may be liable for malicious prosecution if Casasola knowingly made a false report to the police.

Defendants also cite plaintiff's preliminary hearing testimony that he screamed, and argue that "Casasola could easily have misinterpreted [plaintiff's] outraged cries." The "could have," says it all. Defendants may seek to convince a jury that Casasola misheard plaintiff's statements, but a jury could also conclude from the evidence that Casasola deliberately lied, in order to induce police to make the call a priority, or to ensure that when they did arrive plaintiff would be arrested, because she disliked plaintiff for the way he behaved, or for another reason.

This is also our response to defendants' contention that plaintiff cannot prove malice, another element of malicious prosecution. (*Centers v. Dollar Markets, supra,* 99 Cal.App.2d at p. 539.) "For purposes of a malicious prosecution claim, malice 'is not limited to actual hostility or ill will toward the plaintiff. . . .' [Citation.]" (*Sycamore Ridge Apartments LLC*

v. Naumann (2007) 157 Cal.App.4th 1385, 1407.) "[I]f the defendant had no substantial ground for believing in the plaintiff's guilt, but, nevertheless, instigated proceedings against the plaintiff, it is logical to infer that the defendant's motive was improper." (5 Witkin, Summary of Cal. Law (10th ed. 2005) Torts, § 485, p. 710.) At the special motion to strike, plaintiff presented evidence, through his own declaration, which would allow a jury to find that Casasola deliberately lied. That would establish malice.

Along the same lines, defendants argue that plaintiff cannot show lack of probable cause, another of the elements of malicious prosecution. "When, as here, the claim of malicious prosecution is based upon initiation of a criminal prosecution, the question of probable cause is whether it was objectively reasonable for the defendant . . . to suspect the plaintiff . . . had committed a crime." (*Ecker v. Raging Waters Group, Inc*. (2001) 87 Cal.App.4th 1320, 1330.) For purposes of a malicious prosecution action, "[p]robable cause does not depend upon the possession of facts which satisfactorily prove the guilt of an accused person. It has reference of the common standard of human judgment and conduct. It exists if one is possessed of information or facts which are sufficient to cause a reasonable person to honestly believe the charge is true [citation]." (*Northrup v. Baker* (1962) 202 Cal.App.2d 347, 354.)

"When the evidence bearing on the question of probable cause is in conflict, it is the province of the jury to determine whether facts exist which will

warrant or reject an inference of probable cause." (*Centers v. Dollar Markets, supra,* 99 Cal.App.2d at p. 541.) As we have seen, there was a conflict of the evidence on whether Casasola honestly believed that plaintiff had threatened to blow up the Bank, or whether she deliberately lied. If she lied, she did not have probable cause.

Defendants argue, however, that the evidence that plaintiff raised his voice, said that he felt like kicking the cardboard display (in their view, this was a threat to destroy bank property), and in plaintiff's words "abused the peace of the Bank," means that they had grounds to suspect him of committing some crime, and that a defendant which has reasonable grounds for suspecting some crime[5] has probable cause, no matter what crime is reported.

They rely on two cases, *Ecker v. Raging Waters Group, Inc., supra,* 87 Cal.App.4th 1320, and *Roberts v. McAfee, Inc.* (9th Cir. 2011) 660 F.3d 1156.

In *Ecker v. Raging Waters, supra,* 87 Cal.App.4th 1320, the plaintiff was detained by security guards at an amusement park, after several adolescent boys complained that plaintiff was following and

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[5] Defendants do not specify the crime they had reason to suspect, but they are presumably referring to Penal Code section 415, commonly referred to as "disturbing the peace." We note, however, that plaintiff's testimony, in the criminal trial, that he "abused the peace of the Bank" is not an admission to a violation of Penal Code section 415.

videotaping them. Security observed plaintiff, saw that he was surreptitiously videotaping juveniles and, once he was in the security office, looked at the tape in his camera and saw that the videotape consisted exclusively of shots of the bodies of adolescent boys. They contacted law enforcement. Plaintiff was taken into custody for the misdemeanor of annoying or molesting a child under the age of 18, charged with that offense, and acquitted after jury trial. He sued for malicious prosecution, but was nonsuited on the ground of probable cause. The appellate court affirmed, finding that given all the facts, "it was objectively reasonable to suspect that [plaintiff's] actions of following male juveniles and videotaping their bodies in a secretive manner –actions which clearly disturbed and upset the boys who had complained – were criminal." (*Id*. at p. 1331.) Plaintiff's argument to the contrary relied on the security guard's testimony that he was not sure which park rule or which law had been violated. The court held that the fact that the guard "was uncertain of the precise crime [plaintiff] may have committed is irrelevant to the determination of probable cause. The issue is whether it was objectively reasonable to suspect [plaintiff] had committed a crime. It was. Determination of the crime(s) to be charged is authority properly vested in a prosecuting agency, not a private amusement park . . . ." (*Id*. at p. 1332.)

In *Roberts v. McAfee, Inc., supra,* 660 F.3d 1156, plaintiff was prosecuted for fraud, on allegations, which originated with his employer, concerning his

participation in a stock option backdating scheme. His malicious prosecution case included allegations that the employer had falsified and withheld evidence to make his culpability seem clearer than it really was. The court held that the employer nonetheless had probable cause, noting that the employer "had probable cause to accuse [plaintiff] of participating in the illegal backdating of three stock option grants . . . regardless of whether [the employer] . . . or its agents misrepresented evidence to government investigators." (*Id*. at p. 1164.)

We cannot see that either case holds that a defendant with – at best – some belief that a misdemeanor is being committed can make up evidence of an entirely different and much more serious crime. We note in this regard that under the facts before us, a police officer responding to a disturbing the peace complaint would not have arrested plaintiff, who was manifestly not disturbing the peace when officers arrived. (Pen. Code, § 836, subd. (a)(1).)

Disposition

The judgment in favor of Reyes is affirmed; the judgment in favor of the Bank and Casasola is reversed. Appellant to recover costs on appeal.

CERTIFIED FOR PUBLICATION

ARMSTRONG, J.

We concur:

TURNER, P. J.

MOSK, J.

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ATTORNEYS FOR DEFENDANTS BANK OF AMERICA, N.A.; JENNY CASASOLA AND YAHAIRA REYES

SUPERIOR COURT OF CALIFORNIA

COUNTY OF LOS ANGELES

GARY GREENE, PLAINTIFF VS. BANK OF AMERICA; A BUSINESS ENTITY; YANI CASASOLA; AN INDIVIDUAL; YAHAIRA REYES; AN INDIVIDUAL; CITY OF LOS ANGELES, A MUNICIPAL CORPORATION; OFFICER LIN #35731; AN INDIVIDUAL; OFFICER AVILLA #37951; AN INDIVIDUAL; OFFICER AFFUL; AN INDIVIDUAL; OFFICER GOODNIGHT; AN INDIVIDUAL; DOES 1 TO 20 INCLUSIVE, DEFENDANTS.	Case No. BC 478655 ~~[PROPOSED]~~ **JUDGMENT** (Filed Nov. 27, 2012) ASSIGNED FOR ALL PURPOSES TO: THE HON. FRANK JOHNSON, DEPT. NW-B ACTION FILED: FEBRUARY 9, 2012

This Court, having entered a ruling on August 13, 2012, granting the motion to strike of defendants Bank of America, N.A., Yani* Casasola, and Yahaira Reyes (together, the "BofA Defendants") and against plaintiff Gary Greene ("Greene"), and having entered a ruling granting the motion for attorney's fees of the BofA Defendants and against Greene,

IT IS ORDERED, ADJUDGED AND DECREED that: (1) plaintiff Gary Greene take nothing from defendants Bank of America, N.A., Yani Casasola, and Yahaira Reyes by reason of his complaint in this action; (2) judgment be entered in favor of defendants Bank of America, N.A., Yani Casasola, and Yahaira Reyes and against plaintiff Gray Greene; (3) defendants Bank of America, N.A., Yani Casasola, and Yahaira Reyes shall recover from plaintiff Gary Greene its attorneys' fees in the amount of $19,608.

DATED: NOV 27, 2012

/s/ Frank J. Johnson
Hon. Frank Johnson
Superior Court Judge

[SEAL]

* Jenny Casasola's first name was misspelled as "Yani" in the Complaint and later trial court documents.

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SUPERIOR COURT OF CALIFORNIA

COUNTY OF LOS ANGELES

GARY GREENE, PLAINTIFF VS. BANK OF AMERICA; A BUSINESS ENTITY; YANI CASASOLA; AN INDIVIDUAL; YAHAIRA REYES; AN INDIVIDUAL; CITY OF LOS ANGELES, A MUNICIPAL CORPORATION; OFFICER LIN #35731; AN INDIVIDUAL; OFFICER AVILLA #37951; AN INDIVIDUAL; OFFICER AFFUL; AN INDIVIDUAL; OFFICER GOODNIGHT; AN INDIVIDUAL; DOES 1 TO 20 INCLUSIVE. DEFENDANTS.	Case No. BC 478655 ~~[PROPOSED]~~ **ORDER RE MOTION TO STRIKE PURSUANT TO CCP 425.16 (ANTI-SLAPP)** (Filed Aug. 13, 2012) DATE: JULY 31, 2012 TIME: 8:30 A.M. DEPT.: NW-B 6230 SYLMAR AVENUE VAN NUYS, CA 91401 ASSIGNED FOR ALL PURPOSES TO: THE HON. FRANK JOHNSON, DEPT. NW-B ACTION FILED: FEBRUARY 9, 2012

The motion to strike of defendants Bank of America, N.A. (the "Bank"), Jenny Casasola (incorrectly sued as Yani Casasola) ("Casasola") and Yahaira Reyes ("Reyes") (collectively, "BofA") came on for hearing on July 31, 2012, at 8:30 a.m. in Courtroom NW-B of this Court, the Honorable Frank Johnson, presiding. After reviewing the moving papers, and after hearing oral argument, the Court grants the motion to strike and ruled that defendants are entitled to attorney's fees.

IT IS HEREBY ORDERED that BofA's motion to strike is granted and Gary Greene's entire action is dismissed with prejudice as to defendants BofA. BofA shall file its motion for attorney's fees and costs on or before _____, 2012.

DATED: August 13, 2012

/s/ Frank J. Johnson
Hon. Frank Johnson
LOS ANGELES COUNTY
SUPERIOR COURT JUDGE

APPROVED AS TO FORM

DATED: August 2, 2012 SEVERSON & WERSON
A Professional Corporation

By: /s/ Andrew S. Elliott
Andrew S. Elliott
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BANK OF AMERICA, N.A.,
JENNY CASASOLA AND
YAHAIRA REYES

DATED: August 3, 2012 AKUDINOBI & IKONTE

By: /s/ E. C. Akudinobi
Emmanuel C. Akudinobi
ATTORNEYS FOR PLAINTIFF
GARY GREENE

Court of Appeal, Second Appellate District,
Division Five – No. B243638

S211597

IN THE SUPREME COURT OF CALIFORNIA

En Banc

GARY GREENE, Plaintiff and Appellant,

v.

BANK OF AMERICA et al.,
Defendants and Respondents

(Filed Aug. 28, 2013)

The petition for review is denied.

The request for an order directing depublication of the opinion is denied.

Chin, J., was recused and did not participate.

CANTIL-SAKAUYE
Chief Justice