

No. 19-15899

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

SUSAN MCSHANNOCK, as Executrix of the Estate of Patricia Blaskower, on behalf
of the Estate of Patricia Blaskower and all others similarly situated, et al.,
Plaintiffs-Appellees,

v.

JP MORGAN CHASE BANK N.A., dba CHASE BANK,
Defendant-Appellant.

On Interlocutory Appeal from the United States District Court
for the Northern District of California, No. 3:18-cv-01873 (Chen, J.)

**RESPONSE TO MOTION FOR LEAVE TO LATE FILE THE AMICUS
CURIAE BRIEF OF PROFESSOR ADAM J. LEVITIN**

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October 23, 2019

JPMorgan Chase Bank, N.A. (Chase) files this response to Adam Levitin's motion for leave to file late his proposed amicus brief in support of neither party. Chase respectfully submits that the Court should deny the motion.

First, Professor Levitin's proposed brief is untimely by more than two months. Professor Levitin claims that his brief was due October 14, 2019 (Mot. 11), but Rule 29 provides that "[a]n amicus curiae that does not support either party"—as Professor Levitin professes to be—"must file its brief no later than 7 days after the appellant's or petitioner's principal brief is filed." Fed. R. App. P. 29(a)(6). Chase's opening brief was filed on August 6, 2019, Dkt. No. 16, so any proposed amicus briefs in support of neither party were due on August 13, 2019. Professor Levitin's more than two-month delay in filing is inexcusable.

Second, the matters addressed in amicus briefs must be "relevant to the disposition of the case." Fed. R. App. P. 29(a)(3)(B). Yet Professor Levitin contends that the valid-when-made doctrine, which is the subject of his proposed amicus brief, "has not been robustly briefed for the Court and [] is not necessary to resolve the case in favor of either party." Mot. 6. His proposed brief also explains that "the Court can resolve this appeal in favor of either party without addressing 'valid-when-made,'" and "urges the Court to approach the issue with caution and ideally to avoid it altogether." Proposed Br. 3. By his own account, Professor Levitin's brief will not assist the court.

For the foregoing reasons, Chase respectfully submits that the Court should deny Professor Levitin's motion.

Respectfully submitted,

/s/ Alan E. Schoenfeld

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CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of October, 2019, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit using the appellate CM/ECF system. I certify that all participants in the case other than Professor Adam J. Levitin are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

I further certify that on this 23rd day of October, 2019, I served the foregoing on Professor Adam J. Levitin by email.

/s/ Alan E. Schoenfeld
ALAN E. SCHOENFELD

October 23, 2019