No. 97495-1
(Court of Appeals No. 78439-1-I)
(King County Superior Court No. 18-2-01588-0)

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

CLOUDY SKIES PROPERTIES, LLC et al.,

Petitioners,

v.

BAYVIEW LOAN SERVICING, LLC, et al.,

Respondents.

JPMORGAN CHASE BANK, N.A.'S ANSWER TO PETITIONERS' PETITION FOR REVIEW

Fred B. Burnside, WSBA No. 32491
Frederick A. Haist, WSBA No. 48937

Davis Wright Tremaine LLP
Attorneys for JPMorgan Chase Bank, N.A.

920 Fifth Avenue, Suite 3300
Seattle, WA 98104-1610
206-622-3150 (telephone)
206-757-7700 (fax)

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I. INTRODUCTION AND SUMMARY OF ARGUMENT.

Peter Schaub and Cloudy Sky Properties LLC ("Plaintiffs") seek review in this Court by re-hashing their unsuccessful arguments below. Plaintiffs cite a federal statute—the Real Estate Settlement Procedures Act ("RESPA")—which does not apply to rental properties but which they argue required Defendant Bayview Loan Servicing LLC to postpone a foreclosure. Using an alleged RESPA violation, they argue that the resulting foreclosure was wrongful under Washington law. They are mistaken. There is no important issue for this Court to resolve and the Court should deny review of the claims against Defendant JPMorgan Chase Bank, N.A. for the following reasons:

First, Plaintiffs waived review of any claims against Chase.

Second, the appellate court's opinion correctly followed precedent: (1) RESPA does not apply to Chase on these facts; and (2) Plaintiffs' promissory estoppel claim fails because: (a) Plaintiffs did not sue Chase under promissory estoppel; (b) Bayview did not promise to postpone a foreclosure while their application was pending; and (c) Plaintiffs did not show reliance.

Third, the public interest is not affected.

II. IDENTITY OF RESPONDENT.

Chase is a respondent and a defendant in this case.

III. STATEMENT OF CASE.

Plaintiffs' statement ignores the procedural posture by arguing that Chase provided evidence outside the pleadings. But the trial court

dismissed Chase under CR 12(b)(6), so Chase did not submit improper evidence, did not "dispute" facts, and the trial court did not make factual findings. Plaintiffs' case statement outlines their *allegations*, albeit embellishing and conflating them with argument, factual assumptions, and irrelevant digressions.[1] Chase will not burden the Court with another summary but will add relevant allegations, facts, and procedural history.

A. Plaintiffs' Allegations.

Plaintiffs do not actually allege that Chase took any actions toward foreclosure. Instead, they direct all of their allegations against Bayview, and then offer the conclusory allegation—contrary to every document they reference—that Bayview was acting as Chase's agent and thus Chase is responsible for whatever Bayview did. Plaintiffs allege no facts showing any principal-agent relationship between the two parties. CP 2 [¶ 1.6], 3 [¶ 1.8], 10 [¶ 4.3], 11 [¶ 5.2]. Plaintiffs allege Chase owned the Note, but does not allege that it *held* the Note. CP 5 [¶ 3.6]. Indeed, Plaintiffs expressly allege Chase "was not the holder of the obligation by virtue of the fact that [Chase] retained ownership of the Note." CP 5 [¶ 3.6]. After December 2013, Plaintiffs do not allege Chase took any actions but merely conclude Chase is liable. CP 6-7 [¶¶ 3.9-3.12], 10 [¶ 4.3], 11 [¶ 5.2].

[1] For example, Plaintiffs assert Chase denied a loan modification in 2010 but did not base their claims on that denial, likely because it is time-barred. *See* 12 U.S.C. § 2614; *Snow v. First Am. Title Ins. Co.*, 332 F.3d 356, 359 (5th Cir. 2003); RCW 61.24.127(2)(a); RCW 19.86.120; RCW 4.16.080.

Instead, Plaintiffs admitted Bayview handled servicing and loan modification discussions after December 2013. CP 6-9 [¶¶ 3.9-3.19], 75-78. And the Complaint and its exhibits show Bayview held Plaintiffs' Note when it acted on its own and foreclosed on their Property because:

1) Chase assigned the Deed of Trust to Bayview before Plaintiffs sought modification with Bayview (CP 55-56);

2) Bayview's Appointment of Successor Trustee states it (not Chase) is the loan beneficiary—*i.e.*, the note holder under *Brown v. Wash. State Dep't of Commerce*, 184 Wn.2d 509, 540, 544 (2015) (CP 58);

3) The Trustee's June 2014 Notice of Trustee's Sale states Bayview (not Chase) is the loan beneficiary—*i.e.*, the Note holder (CP 60-65);

4) The Trustee's January 2015 Notice of Trustee's Sale states Bayview (not Chase) is the loan beneficiary—*i.e.*, the Note holder (CP 67-71);

5) Plaintiffs submitted a loan modification application **to Bayview** (not Chase) after business hours on April 14, 2015, when the sale date was May 22, 2015 (CP 120-124);

6) Plaintiffs' modification application conceded Bayview was (not Chase) the lien holder (CP 121);

7) Bayview (not Chase) was allegedly considering Plaintiffs' application (CP 8);

8) Bayview (not Chase) requested additional documents to supplement Plaintiffs' application (CP 8, 77-78);

9) Bayview's letters to Plaintiffs confirmed it was acting as M&T's (not Chase's) agent (CP 75, 77-78);

10) Bayview (not Chase) did not stop foreclosure (CP 8-9);

11) The Trustee's Deed confirms that Bayview (not Chase) was "the holder of the indebtedness"—*i.e.* the Note (CP 80-81);

12) Plaintiffs agreed the "recitals in the Trustee's deed"—confirming Bayview, not Chase, was Note holder—were "prima facie evidence of the truth of the statements made therein" (CP 31 [§ 22]); and

13) Plaintiffs' agent contacted the Trustee to rescind the foreclosure sale, arguing it was invalid because Bayview (not Chase) received a complete modification application (notably, Plaintiffs did not demand rescission on the ground Bayview was a non-Note holder) (CP 9 [¶ 3.19]).

These exhibits, allegations, and admissions refute Plaintiffs' legal conclusion that Bayview was Chase's agent because it owned the Note.[2]

B. Procedural History.

Plaintiffs' Complaint alleged: (1) a Consumer Loan Act (RCW 31.04.027 "CLA") claim premised on a RESPA violation; (2) a Consumer Protection Act (RCW 19.86 *et. seq.*, "CPA") claim; (3) an unjust enrichment claim; and (4) a Deed of Trust Act (RCW 61.24.127, "DTA") claim. CP 1-84. Chase filed a motion to dismiss. CP 85-104. The trial court dismissed Chase without leave to amend, finding it was not liable by association:

> The argument I heard today from Mr. Jones, while well stated and nicely argued, repeatedly lapsed into talking about "they." "They did this." "They did that." "They lulled him." "They encouraged." . . . It is not an accident that the argument was put in the conjunctive and not pulled out precisely to meet the arguments that were made by J.P. Morgan Chase in this matter.

Nov. 3, 2017 RT 30:6-14.

Bayview and the Trustee also filed a motion to dismiss, which the trial court granted with leave to amend, but only gave Plaintiffs leave to state an estoppel claim against Bayview (not Chase). Nov. 15, 2017 RT 22:18-23:8. Plaintiffs amended their Complaint to assert additional allegations and estoppel claims against Bayview and the Trustee, not Chase. CP 271-356. Bayview and NWTS again successfully moved to

[2] Plaintiffs cannot amend to maintain their agent theory and comply with CR 11 because when they investigate, they will learn Freddie Mac owned their Note and Chase transferred it after December 2013.

dismiss. CP 392; March 2, 2018 RT 53:14-55:2. Plaintiffs appealed, and the appellate court affirmed the trial court decision. *Schaub v. JPMorgan Chase Bank N.A.*, 2019 WL 2751168, *6 (2019).

IV. ARGUMENT.

This Court should deny review because the Court of Appeals' opinion does not conflict with any published Washington decision and there is no public-interest issue. Despite citing several issues for this Court to review, Plaintiffs solely argue that the trial court incorrectly dismissed their RESPA-based promissory estoppel claim—which they did not allege against Chase. But regardless of any agency theory, the Court of Appeals ultimately was correct: (1) their claim that RESPA applies is legally **wrong**; and (2) the appellate court could not interpret the April 25, 2015 letter as estopping Bayview from foreclosing because Bayview **never** promised to postpone a foreclosure, and Plaintiffs **fail** to show reliance. This Court should deny review.

A. Plaintiffs Waived Review on Claims Alleged Against Chase.

Plaintiffs' Petition solely argues the appellate court's decision was wrong on RESPA (which was not a separate claim, Plaintiffs predicated their CLA claim on it) and promissory estoppel (which they did not allege against Chase, *see infra*). But Plaintiffs indicate they seek review of their CLA, DTA, and CPA claims alleged against Chase.[3] Pet. p. 3-4. They waived review of these claims.

[3] Plaintiffs previously waived review on their unjust enrichment claim. CP 241; Nov. 3, 2017 RT 11, 16; RAP 2.4, 2.5, 10.3(a)(5), 12.1; *US W. Commc'ns, Inc. v. Wash. Utils.&*

Plaintiffs did not raise their CLA claim before the appellate court. "Although Schaub alleges that the claim was 'thoroughly' addressed in his opening brief, the pages cited reference the CLA only in passing and include no argument as to how Respondents violated the CLA." *Schaub*, 2019 WL 2751168, at *6. Before this Court, they only mention it once, in passing, in their RESPA argument. This is insufficient to preserve review. *State v. Donaghe*, 172 Wn.2d 253, 263 fn.11 (2011) ("We do not review issues inadequately briefed or mentioned in passing").

Plaintiffs' Petition only references the DTA as a RESPA damage—that is, because Bayview violated RESPA, they were not able to cure their default or enjoin the sale under the DTA. Pet. p. 15, 18, 19. They do not argue or provide authority for a discrete DTA violation. Thus, they have waived review on this issue. *Aiken v. Aiken*, 187 Wn.2d 491, 499 fn.3 (2017); *Donaghe*, 172 Wn.2d at 263 fn.11. And they waived their DTA claim by failing to enjoin the foreclosure sale. *Merry v. Nw. Tr. Servs., Inc.*, 188 Wn. App. 174, 183 (2015); RCW 61.24.130; RCW 61.24.127(3) (DTA provisions allowing some post-sale relief do not apply to non-owner occupied property); CP 6-8 [¶¶ 3.11-3.12, 3.15-3.17], 60-65, 67-71.

Finally, while Plaintiffs mention their CPA claim as an issue for review, they reference it only in passing in their RESPA argument. This is insufficient. *Donaghe*, 172 Wn.2d at 263 fn.11.

Transp. Comm'n, 134 Wn.2d 74, 112 (1997), *as amended* (Mar. 3, 1998); *Wilcox v. Basehore*, 187 Wn.2d 772, 788 (2017). They also do not cite it as an issue presented for review by this Court. *State v. Korum*, 157 Wn.2d 614, 625 (2006).

Thus, there is nothing for the Court to review as to Chase.

B. The Appellate Court Correctly Followed Precedent.

Plaintiffs do not cite any specific published decision that conflicts with the appellate court decision. Instead, Plaintiffs argue the trial and appellate courts wrongly held RESPA was inapplicable and Bayview's April 21, 2015 letter and RESPA estopped Bayview from foreclosing. The appellate court's decision was correct and complies with law—RESPA does not apply, no one promised Plaintiffs postponement, and they did not rely on Bayview's (non-existent) promise.

1. RESPA Does Not Apply to Non-Owner Occupied Property or Non-Servicers like Chase.

Chase never accepted Plaintiffs' loan modification application—Bayview did, because it (not Chase) was their loan servicer. Plaintiffs argue RESPA required Bayview to review them for a loan and postpone the foreclosure while doing so. But "[t]he procedures set forth in §§ 1024.39 through 1024.41 of this subpart **only apply to a mortgage loan that is secured by a property that is a borrower's principal residence**" (emphasis added). 12 C.F.R. § 1024.30(c)(2). Likewise, RESPA does not apply to loans "primarily for business, [or] commercial" uses. 12 U.S.C. § 2606(a)(1). Plaintiffs admitted and conceded Mr. Schaub did not occupy the rental property nor own it after April 30, 2013. CP 2 [¶ 1.2], 35-38; Pet. p. 5, 8, 17-18. Thus, RESPA does not apply and Chase and Bayview are not liable—the appellate court correctly followed the law.

Ignoring their decisive admission, Plaintiffs argue that because Bayview accepted their modification application, RESPA applies. Pet. p. 17-18. They fail to provide any authority for this wrong conclusion. An inapplicable law does not apply merely because an entity elects to act consistently with it. Plaintiffs' argument conflicts and contradicts statutory and regulatory language stating RESPA does not apply to investment property. *Johnson v. Wells Fargo Home Mortg., Inc.*, 635 F.3d 401, 417 (9th Cir. 2011). Plaintiffs' estoppel theory would eviscerate the plain language in RESPA and the *Johnson* holding.

Additionally, Chase is not liable because RESPA's regulations expressly state that the ***servicer*** has the duties Plaintiffs claim, ***not*** anyone else. 12 C.F.R. § 1024.2 expressly defines lender differently from servicer, and 12 C.F.R. § 1024.41 applies only to an application sent to the current loan ***servicer***. 12 C.F.R. § 1024.2(b), 1024.31, 1024.41. Plaintiffs admitted Chase transferred servicing in 2013 and Bayview serviced the loan in 2015 when they asked for a loan modification. CP 6-7 [¶¶ 3.9-3.11], 7-8 [¶¶ 3.14-17]. Thus, Plaintiffs' RESPA claim fails against Chase because RESPA does not apply—as the appellate court correctly held.

2. Plaintiff's Promissory Estoppel Claim Fails

Recognizing that RESPA does not apply on its face, Plaintiffs argue RESPA requirements are binding under promissory estoppel; they are **wrong**. Pet. p. 18-20. A claim for promissory estoppel consists of: (1) a promise which (2) the promisor should reasonably expect to cause

the promisee to change his position and (3) which does cause the promisee to change his position (4) justifiably relying upon the promise, in such a manner that (5) injustice can be avoided only by enforcement of the promise. *Havens v. C & D Plastics, Inc.*, 124 Wn.2d 158, 171-72 (1994) (quoting *Klinke v. Famous Recipe Fried Chicken, Inc.*, 94 Wn.2d. 255, 259 n.2 (1980)). Plaintiffs' promissory estoppel claim requires a promise. But Chase did not communicate with them after 2013 so it never promised them anything. And Bayview never promised to stop the foreclosure. Plaintiffs misconstrue Bayview's April 21, 2015 letter—the appellate court correctly applied contractual interpretation law in finding Plaintiffs did not state their claim.

a. Plaintiffs Did Not Sue Chase for Promissory Estoppel.

Plaintiffs never pleaded a promissory estoppel claim against Chase—they added it to their amended complaint after the trial court dismissed Chase. CP 1-84 (Complaint); cf. CP 271-356 (Amended Complaint). They never sought leave to allege promissory estoppel against Chase—and the trial court only granted leave to allege it against Bayview. Nov. 15, 2017 RT 22:18-23:8. They cannot retroactively hold Chase liable on their new claim. *See e.g., Ennis v. Ring*, 49 Wn.2d 284, 288 (1956) (new claim does not relate back to original complaint); *Herron v. KING Broad. Co.*, 109 Wn.2d 514, 521 (1987), *decision clarified on reh'g*, 112 Wn.2d 762 (1989). There is nothing to review as to Chase.

b. Bayview Did Not Promise to Postpone the Foreclosure While Plaintiffs' Modification Application Was Pending.

Plaintiffs, attempting to avoid RESPA's inapplicability, claim that RESPA and the Home Affordable Modification Program ("HAMP") nevertheless somehow apply and RESPA and HAMP's provisions estopped Bayview from foreclosing while it reviewed their modification application.[4] Pet. p. 13-18.

Recognizing Chase did not take their application, Chase did not send the April 21, 2015 letter they reference, and Chase did not make any representation to them, Plaintiffs argue, with no factual support, that Chase owned their Note, somehow making Bayview Chase's agent. CP 2 [¶¶ 1.6, 1.8, 4.3, 5.2]. But nothing in the record supports this legal conclusion—which this Court can disregard, *Haberman v. Wash. Pub. Power Supply Sys.*, 109 Wn.2d 107, 120 (1987), *amended,* 750 P.2d 254 (1988). Even if hypothetically Chase owned the Note, ownership does prove Bayview was its agent.

> [The servicer's] agreement with JPMorgan Chase and J.P. Morgan Trust—the apparent holders of the note at the time QLS was appointed successor trustee— . . . specified that [the servicer's] relationship to JPMorgan Chase and J.P. Morgan Trust was "intended by the parties to be that of an independent contractor *and not that of a joint venturer, partner or agent.*" (Emphasis added.)

[4] HAMP was a now-expired federal program designed to encourage loan modifications and had provisions on how to handle applications.

Rucker v. Novastar Mortg., Inc., 177 Wn. App. 1, 15–16 (2013). Plaintiffs must allege more than an unsupported legal conclusion to state a claim.

And the record disproves Plaintiffs' legal conclusion that Chase had any Note interest. Plaintiffs submitted facts and evidence with their Complaint that show Bayview acted as Note holder, not Chase's agent:

1) Chase assigned the Deed of Trust to Bayview;

2) Bayview's Appointment of Successor Trustee states it (not Chase) is the loan beneficiary;

3) The Trustee's June 2014 Notice of Trustee's Sale states Bayview (not Chase) is the loan beneficiary;

4) The Trustee's January 2015 Notice of Trustee's Sale states Bayview (not Chase) is the loan beneficiary;

5) the Trustee's Deed states Bayview (not Chase) is "the holder of the indebtedness [*i.e.*, Note]";

6) Plaintiffs agreed the "recitals in the Trustee's deed shall be prima facie evidence of the truth of the statements made therein";

7) Plaintiffs submitted a loan modification application **to Bayview** (not Chase) after hours on April 14, 2015 when the sale date was May 22, 2015;

8) Plaintiffs' modification application conceded Bayview (not Chase) was the lien holder;

9) Bayview (not Chase) was allegedly considering Plaintiffs' application;

10) Bayview (not Chase) requested additional documents to supplement Plaintiffs' application;

11) Bayview did not postpone the foreclosure sale; and

12) Plaintiffs' agent contacted the Trustee (not Chase) to rescind the foreclosure sale arguing it was invalid because Bayview received a complete modification application—notably, Plaintiffs did not demand rescission on the ground Bayview was a non-Note holder.

CP 6-8, 31 [§ 22], 54-56, 58, 60-65, 67-71, 80-81, 120-124.

And Plaintiffs expressly allege Chase "was not the holder of the obligation by virtue of the fact that [Chase] retained ownership of the Note." CP 5 [¶ 3.6]. The recitals in the Trustee's Deed alone settle this issue because they are presumptively true. RCW 61.24.040(7). Plaintiffs' support their theory as to Chase only by legal conclusion, which their allegations show is false. *Haberman*, 109 Wn.2d at 120.

But even if Bayview were Chase's agent and even if Plaintiffs had sued Chase for estoppel, they cannot state their promissory estoppel claim. Bayview could foreclose because Plaintiffs' application was incomplete—otherwise borrowers could forever delay foreclosure by re-submitting incomplete modification applications. Bayview's April 21, 2015 letter indicates Plaintiffs failed to provide all the documents it required to review their modification application. CP 77-78. Plaintiffs also admit Bayview told them it needed further documents before the sale date. CP 8 [¶ 3.17]. Disregarding these facts, Plaintiffs argue that HAMP requirements for

facially complete applications apply, and that Bayview had to postpone the foreclosure. Pet. p. 14-18. But Bayview's letters did not promise to review them under HAMP at any time. CP 75, 77-78. Plaintiffs' application was a general, non-HAMP application. CP 120-124. Plaintiffs do not point to any HAMP provision requiring a foreclosure postponement when a non-HAMP application is pending. Thus, Plaintiffs' HAMP discussion is irrelevant and a red herring.

But whether Plaintiffs' application was complete is another red herring. Even assuming their application were facially or fully complete, RESPA prohibits proceeding with a pending foreclosure only if RESPA applies in the first instance. It does not. The appellate court correctly followed the law—RESPA does not apply here in any way. And Bayview never promised to follow RESPA requirements, so there is no promise for which Bayview is estopped from denying. Plaintiffs do not cite any other statute or regulation that could require Bayview to review Plaintiffs' application or stop a foreclosure. Bayview never otherwise promised to stop a foreclosure.

The only language potentially indicating Bayview would postpone a foreclosure is in the April 21, 2015 letter's section D. While that section states "While we consider your request, you home will not be referred to foreclosure. Any scheduled foreclosure sale will not occur pending our determination," the immediately following sentence says: "If you qualify, any foreclosure sale will not occur pending your timely return of the Trial

Period Plan payments." Plaintiffs argue this Court should use contractual interpretation principles to interpret the April 21, 2015 letter. Using the words Trial Period Plan shows that the section only applied when Bayview offered a Trial Period Plan. "Courts can neither disregard contract language which the parties have employed nor revise the contract under a theory of construing it." *Seattle-First Nat'l Bank v. Westlake Park Assocs.*, 42 Wn. App. 269, 274 (1985) (*quoting Wagner v. Wagner*, 95 Wn.2d 94, 101 (1980)); *Seattle Prof'l Eng'g Emps. Ass'n v. Boeing Co.*, 139 Wn.2d 824, 833 (2000), *opinion corrected on denial of reconsideration*, 1 P.3d 578 (2000). And sections A-C, immediately above section D, all discuss Trial Period Plans. "An interpretation which gives effect to all of the words in a contract provision is favored over one which renders some of the language meaningless or ineffective." *Seattle-First*, 42 Wn. App. at 274. Thus, this "postpone foreclosure" language only applies if and when Bayview offered a Trial Period Plan, which it did not. The appellate court correctly followed contract interpretation law in making its holding.

Regardless, the April 21, 2015 letter does not say Bayview will postpone the foreclosure while an application (facially complete or otherwise) is pending. CP 77-78. Instead it says the opposite—Bayview will not postpone the foreclosure: "If your loan is delinquent, collection/foreclosure activity currently in progress will continue to proceed during the review process" and "[i]f we receive a complete

Borrower Response Package less than 37 calendar days before a scheduled foreclosure sale, there is no guarantee we can evaluate you for a foreclosure alternative in time to stop the foreclosure sale." CP 75, 77-78. Plaintiffs' argument requires the Court to disregard the April 21, 2015 letter's plain words stating that Bayview would continue with the foreclosure. It cannot. *Seattle-First*, 42 Wn. App. at 274; *Boeing*, 139 Wn.2d at 833. The appellate court fully considered the April 21, 2015 letter and correctly followed the law in determining Bayview did not promise to postpone the foreclosure. *Schaub*, 2019 WL 2751168, at *4.

c. Plaintiffs Did Not Show Reliance

Plaintiffs claim they did not try to cure their default or enjoin the foreclosure sale because they relied on Bayview's promise not to foreclose. Pet. p. 15. But Bayview never promised to stop the foreclosure, even in the April 21, 2015 letter. And Plaintiffs admitted Bayview told them (through their agent) that it needed additional documents eight days before the sale. CP 8 [¶ 3.17]. Notably, they do not claim they provided the requested documents before the sale. Thus, they knew Bayview needed additional documents before the sale and had no basis for resting on their belief they submitted a complete application. *See Uznay v. Bevis*, 139 Wn. App. 359, 371 (2007) (actions taken after a deal was cancelled do not constitute detrimental reliance).

And Bayview told them it would not postpone a foreclosure sale, even if the application were complete. CP 77. Bayview's April 21, 2015

letter expressly indicated that if it received a complete application less than 37 days before a sale, "there is no guarantee we can evaluate you for a foreclosure alternative in time to stop the foreclosure sale." CP 77. Plaintiffs did not provide the additional documents so they cannot show reliance on a conditional promise where the condition was not met. *State ex rel. D.R.M.*, 109 Wn. App. 182, 197 (2001) (plaintiff's contractual breach eliminated her ability to justifiably rely on defendant's promise). And Plaintiffs had time—eight days—to enjoin the sale or cure their default but failed to do so. The appellate court correctly found that Plaintiffs failed to establish detrimental reliance, and correctly followed the law in affirming the trial court. *Schaub*, 2019 WL 2751168, at *4-5.

C. The Appellate Court Decision Does Not Implicate Any Public Interest.

Plaintiffs do not explain how the appellate court's decision implicates a public interest. In determining whether the public interest is affected, the Court should consider "(1) the public or private nature of the issue; (2) the desirability of an authoritative determination that will provide future guidance to public officers; and (3) the likelihood that the issue will recur." *In re Det. of Johnson*, 179 Wn. App. 579, 584 (2014), *review denied sub nom.*, 181 Wn.2d 1005 (2014).

The facts Plaintiffs pleaded in this action are private and will not affect the public repeatedly or give guidance to future litigants. The April 21, 2015 letter is unique to them—they focus on the specific language that Bayview told them it needed documents, but did not list those documents.

This Court's decision would apply ***only to this situation***, providing little guidance to future litigants. And RESPA expressly does not apply to Plaintiffs' loan or to Chase. The Court's opinion would merely reaffirm the statute (and corresponding case law, *see Clark v. HSBC Bank USA, Nat'l Ass'n*, 664 F. App'x 810, 813 (11th Cir. 2016) (unpublished); *Johnson*, 635 F.3d at 417. Thus, there is no basis for review.

V. CONCLUSION AND REQUEST FOR COSTS.

For the reasons set forth above, the Court should deny Plaintiffs' petition for review. The Court should also award Chase its costs in connection with Plaintiffs' petition for review under RAP 18.1(j), permitting an award "to the party who prevailed in the Court of Appeals . . . for the prevailing party's preparation and filing of the timely answer to the petition for review." Plaintiffs' petition has no merit and fails to identify any conflict of law or issue of public interest.

RESPECTFULLY SUBMITTED this 4th day of September, 2019.

Davis Wright Tremaine LLP
Attorneys for JPMorgan Chase Bank, N.A.

By */s/Frederick A. Haist*
Fred B. Burnside, WSBA No. 32491
Frederick A. Haist, WSBA No. 48937

DECLARATION OF SERVICE

The undersigned hereby declares under penalty of perjury under the laws of the state of Washington that on this 4th day of September 2019, he electronically filed the foregoing document with the Washington State Supreme Court, which will send notification of such filing to the attorneys of record listed below. The attorneys of record listed below were also served with the foregoing document via email.

Gregor Hensrude	ghensrude@klinedinstlaw.com
Stephanie Diane Olson	solson@klinedinstlaw.com
Richard Llewelyn Jones	rlj@kovacandjones.com

DATED this 4th day of September 2019 at Seattle, Washington.

/s/Frederick A. Haist
Frederick A. Haist, WSBA #48937

DAVIS WRIGHT TREMAINE LLP

September 04, 2019 - 8:11 AM

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