

1 XAVIER BECERRA  
 Attorney General of California  
 2 NICKLAS A. AKERS  
 Senior Assistant Attorney General  
 3 MICHELE VAN GELDEREN (SBN 171931)  
 Supervising Deputy Attorney General  
 4 TINA CHAROENPONG (SBN 242024)  
 DEVIN W. MAUNEY (SBN 294634)  
 5 Deputy Attorney General  
 1515 Clay St., 20<sup>th</sup> Floor  
 6 Oakland, CA 94612  
 Tel: (510) 879-0814  
 7 Fax: (510) 622-2270  
 Email: devin.mauney@doj.ca.gov

8 *Attorneys for Plaintiff*  
 9 *the People of the State of California*

10 IN THE UNITED STATES DISTRICT COURT  
 11 FOR THE NORTHERN DISTRICT OF CALIFORNIA

13  
 14 **PEOPLE OF THE STATE OF CALIFORNIA, et al.,**

15 Plaintiffs,

16 v.

17  
 18 **THE OFFICE OF THE COMPTROLLER OF THE CURRENCY, et al.,**

19 Defendants.  
 20

Case No. 4:20-cv-05200-JSW

**CALIFORNIA’S ADMINISTRATIVE MOTION TO CONSIDER WHETHER CASES SHOULD BE RELATED**

21 **ADMINISTRATIVE MOTION**

22 Plaintiff the People of the State of California (“California”) moves under Civil Local Rule  
 23 7-11 for consideration that the following two actions are related:

24 (1) *People of the State of California, et al. v. The Office of the Comptroller of the*  
 25 *Currency, et al.* (“California v. OCC”), No. 4:20-cv-05200-JSW; and

26 (2) *People of the State of California, et al. v. Federal Deposit Insurance Corporation*  
 27 *(“California v. FDIC”),* No. 3:20-cv-05860-CRB.  
 28

1 Because the two actions meet the definition of “related cases” under Civil Local Rule 3-12  
2 and because California has substantially complied with Civil Local Rule 7-11 in bringing this  
3 administrative motion, California respectfully requests that the Court order the two actions  
4 related.

5 **I. THE TWO ACTIONS ARE RELATED**

6 Under Civil Local Rule 3-12(a), this District defines an action to be related to another when  
7 “[t]he actions concern substantially the same parties, property, transaction[,] or event,” and “[i]t  
8 appears likely that there will be an unduly burdensome duplication of labor and expense or  
9 conflicting results if the cases are conducted before different Judges.” Both requirements are met  
10 here.

11 **A. The Two Actions Concern Substantially the Same Parties and Events**

12 The two actions concern substantially the same parties and events—in both matters, state  
13 plaintiffs challenge banking regulations that the federal government issued in tandem and that  
14 cover substantially the same subject matter.

15 *California v. OCC* challenges a final rule issued by the Office of the Comptroller of the  
16 Currency (“OCC”) pertaining to nationally chartered banks and federal savings associations. The  
17 OCC’s rule extends preemption of state interest-rate caps under 12 U.S.C. §§ 85 (for national  
18 banks) and 1463(g) (for federal savings associations) to non-bank buyers of debt originated by  
19 national banks or federal savings associations. 85 Fed. Reg. 33,530-36. The OCC’s rule is  
20 intended to displace the Second Circuit’s holding in *Madden v. Midland Funding, LLC* that § 85  
21 does not apply to non-bank buyers of debt originated by national banks. *Madden v. Midland*  
22 *Funding, LLC*, 786 F.3d 246, 253 (2d Cir. 2015). Plaintiffs in this action are the People of the  
23 State of California, the People of the State of Illinois, and the People of the State of New York;  
24 Defendants are the OCC and Brian P. Brooks, in his official capacity as Acting Comptroller of  
25 the Currency.

26 *California v. FDIC* challenges the parallel rule, issued by the Federal Deposit Insurance  
27 Corporation (“FDIC”), that pertains to state-chartered banks. Like the OCC’s rule, the FDIC’s  
28 rule extends preemption of state interest-rate caps under 12 U.S.C. § 1831d (for state-chartered

1 banks) to non-bank buyers of debt originated by state-chartered banks. 85 Fed. Reg. 44,146-58.<sup>1</sup>  
 2 In its final rule, the FDIC contends §§ 85 and 1831d must be interpreted “*in pari materia*,” a  
 3 position the OCC also adopts in its final rule. 85 Fed. Reg. at 33,533; 85 Fed. Reg. at 44,146.  
 4 Also like the OCC, the FDIC explicitly expressed its intent to displace the Second Circuit’s ruling  
 5 in *Madden*. *E.g.*, 85 Fed. Reg. at 44,146-47. Plaintiffs in *California v. FDIC* consist of the same  
 6 three state plaintiffs as in *California v. OCC*, as well as five additional state plaintiffs (the District  
 7 of Columbia, the Commonwealth of Massachusetts, the State of Minnesota, the State of New  
 8 Jersey, and the State of North Carolina). Defendant in this second case is the FDIC; by virtue of  
 9 his office, Acting Comptroller Brooks is a member of the FDIC’s Board of Directors. 12 U.S.C.  
 10 § 1812.

11 Both actions allege that the federal bank regulators violated the Administrative Procedure  
 12 Act (“APA”), 5 U.S.C. § 702, by acting in a manner that was arbitrary, capricious, or otherwise  
 13 not in accordance with law, and in excess of statutory jurisdiction, authority, or limitations, or  
 14 short of statutory right, when they issued final rules interpreting §§ 85, 1463(g), and 1831d to  
 15 apply to non-bank entities. The two actions seek identical substantive relief from the Court: to  
 16 declare that the agencies violated the APA and to hold unlawful and set aside the unlawful  
 17 regulations.

18 Because the two cases involve substantial overlap among the parties and challenge  
 19 substantially similar rulemaking activity, the first requirement of Civil Local Rule 3-12(a) is met.

20 **B. There Will Likely Be an Unduly Burdensome Duplication of Labor and**  
 21 **Expense, or Risk of Conflicting Results, If the Cases Are Not Related**

22 If the actions are not related, it appears likely that there will be duplication of labor and a  
 23 risk of conflicting results. Judicial resolution of the two actions will require examination of  
 24 substantially the same allegations and questions of administrative law concerning federal rules  
 25 regarding interest rates chargeable by non-bank entities. Both matters challenge agency action  
 26 under the APA and will be decided on cross motions for summary judgment based on the  
 27 administrative record. *See* Civ. L.R. 16-5 (“Procedure in Actions for Review on an

28 <sup>1</sup> 12 U.S.C. § 1831d and the FDIC’s rule also pertain to insured branches of foreign banks.

1 Administrative Record”). The legal questions involved in the two matters will overlap  
2 significantly because the challenged rules interpret statutes that the OCC and FDIC contend must  
3 be construed similarly and have the same substantive ends—displacing *Madden* and extending  
4 state interest-rate cap preemption to non-bank entities that purchase loans from banks.  
5 Accordingly, there will be duplication of effort and numerous opportunities during the course of  
6 both actions for conflicting results on important, substantially similar questions of law and fact if  
7 the cases do not proceed in front of the same Judge.

## 8 **II. COMPLIANCE WITH CIVIL LOCAL RULES 3-12 AND 7-11**

9 Under Civil Local Rule 3-12(b), a courtesy copy of this motion must be lodged with the  
10 assigned Judge in each apparently related case. However, in light of the current COVID-19  
11 (Coronavirus Disease) outbreak, the Court suspended its courtesy-copy requirement. *See* Gen.  
12 Order No. 72-5 (adopted July 23, 2020). Accordingly, California will not be lodging courtesy  
13 copies of this motion (or related documents) with any chambers. Instead, California will file a  
14 notice of this filing in *California v. FDIC*.

15 Additionally, under Civil Local Rule 7-11(a), a motion for an order for administrative relief  
16 must include, among other things, a stipulation under Civil Local Rule 7-12 or a declaration that  
17 explains why the stipulation could not be obtained. In this case, both actions were recently filed,  
18 and counsel for the federal government not yet appeared in either. *See* Declaration of Devin W.  
19 Mauney in Support Of Plaintiff’s Administrative Motion to Consider Whether Cases Should Be  
20 Related ¶¶ 3-4. California is therefore unable to confer with Defendants in either case to obtain a  
21 stipulation. *Id.* Because Defendants have not appeared, California will serve this motion (and  
22 related documents) on Defendants in accordance with Rule 4(i) of the Federal Rules of Civil  
23 Procedure. *Id.*

## 24 **III. CONCLUSION**

25 For these reasons, California respectfully requests that the Court order the two actions  
26 related.

1 Dated: August 28, 2020

Respectfully Submitted,

2 XAVIER BECERRA  
3 Attorney General of California  
4 NICKLAS A. AKERS  
5 Senior Assistant Attorney General

6 /s/ Devin W. Mauney  
7 DEVIN W. MAUNEY  
8 Deputy Attorney General

9 *Attorneys for Plaintiff*  
10 *the People of the State of California*

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Defendants.

Case No. 4:20-cv-05200-JSW

**DECLARATION OF DEVIN W. MAUNEY  
 IN SUPPORT OF PLAINTIFF'S  
 ADMINISTRATIVE MOTION TO  
 CONSIDER WHETHER CASES SHOULD  
 BE RELATED**

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 22  
 23 I, Devin W. Mauney, declare as follows:

24 1. I am a Deputy Attorney General at the California Department of Justice, Office of  
 25 the Attorney General. I represent plaintiff the People of the State of California ("California") in  
 26 this matter. In this position, I have personal knowledge of the facts in this declaration.

27 2. On August 20, 2020, California and seven other state plaintiffs sued the Federal  
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1 Deposit Insurance Corporation (“FDIC”) for violating the Administrative Procedure Act by  
2 unlawfully issuing a final rule to extend preemption of state interest-rate caps to non-bank buyers  
3 of debt originated by state-chartered banks (*People of the State of California, et al. v. Federal*  
4 *Deposit Insurance Corporation*, No. 3:20-cv-05860-CRB). Prior to filing that case, California  
5 knew that it was potentially related to the above-caption case, which California, along with the  
6 People of the State of Illinois and the People of the State of New York, filed on July 29, 2020.

7 3. Civil Local Rule 3-12 requires a party in an action to promptly file, in the lowest-  
8 numbered case, an “Administrative Motion to Consider Whether Cases Should be Related.”  
9 California is therefore submitting an administrative motion complying with this rule in the above-  
10 captioned case. However, because both *California v. FDIC* and the above-captioned case were  
11 recently filed, counsel for the defendants have not yet appeared in either case. Therefore,  
12 California is unable to obtain a stipulation signed by all affected parties or their counsel as  
13 required by Civil Local Rule 7-12. California submits this declaration in lieu of a stipulation, as  
14 permitted by Civil Local Rule 7-11(a).

15 4. Because the defendants have not yet appeared in either case, California will serve  
16 its administrative motion (and related documents) on defendants in both cases in accordance with  
17 Rule 4(i) of the Federal Rule of Civil Procedure.

18 5. On July 23, 2020, in light of the ongoing COVID-19 (Coronavirus Disease)  
19 outbreak, the Court adopted General Order No. 72-5, which, among other things, suspends the  
20 Court’s requirement to provide courtesy copies under Civil Local Rule 5-1. Accordingly,  
21 California will not be providing courtesy copies its motion (or related documents) to any  
22 chambers. Instead, California will file a notice of this filing in *People of the State of California, et*  
23 *al. v. Federal Deposit Insurance Corporation*, No. 3:20-cv-05860-CRB.

24 I declare under penalty of perjury that the foregoing is true and correct. Executed on  
25 August 28, 2020, in Oakland, California.

26 /s/ Devin W. Mauney

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Defendants.

Case No. 4:20-cv-05200-JSW

**[PROPOSED] RELATED CASE ORDER**

A Motion for Administrative Relief to Consider Whether Cases Should Be Related (Civil L.R. 3-12) has been filed. I am the Judge assigned to the above-captioned case.

I find that the more recently filed case, *People of the State of California, et al. v. Federal Deposit Insurance Corporation*, No. 3:20-cv-05860-CRB, is related to the above-captioned case, and such case shall be reassigned to me.

The parties are instructed that all future filings in any reassigned case are to bear the initials of the newly assigned Judge immediately after the case number. Any case management conference in any reassigned case will be rescheduled by the Court. The parties shall adjust the dates for the conference, disclosures and report required by Federal Rule of Civil Procedure 16 and 26 accordingly. Unless otherwise ordered, any dates for hearing noticed motions are vacated



1 and must be re-noticed by the moving party before the newly assigned Judge; any deadlines set  
2 by the ADR Local Rules remain in effect; and any deadlines established in a case-management  
3 order continue to govern, except dates for appearance in court, which will be rescheduled by the  
4 newly assigned Judge.

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Dated:

By: \_\_\_\_\_  
UNITED STATES DISTRICT JUDGE