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14
 15 UNITED STATES DISTRICT COURT
 16 NORTHERN DISTRICT OF CALIFORNIA
 17 OAKLAND DIVISION

18
 19 PEOPLE OF THE STATE OF CALIFORNIA,) Case No. 4:20-cv-05200-JSW
 et al.,)
 20 Plaintiffs,) **ANSWER**
 21 v.)
 22 THE OFFICE OF THE COMPTROLLER OF)
 23 THE CURRENCY, and BRIAN P. BROOKS,)
 in his official capacity as Acting Comptroller of)
 24 the Currency,)
 25 Defendants.)

26
 27 Defendants, the Office of the Comptroller of the Currency and Brian P. Brooks hereby answer

1 Plaintiffs’ Complaint for Declaratory and Injunctive Relief (“Complaint”), ECF No. 1, as follows.
2 Plaintiffs’ inclusion of footnotes throughout the Complaint does not comply with Federal Rule of Civil
3 Procedure 10(b), requiring that allegations be stated “in numbered paragraphs, each limited as far as
4 practicable to a single set of circumstances.” As such, no response is required to these footnotes. To the
5 extent a response is required, each footnote is discussed in the relevant numbered paragraph below.

6 **INTRODUCTION**

7
8 1. Sentence 1 of this paragraph is Plaintiffs’ characterization of this action, and not an
9 allegation of fact for which a response is required. To the extent a response is required, the allegations
10 are denied. Defendants lack knowledge or information sufficient to form a belief about the truth of the
11 allegations in Sentence 2 of this paragraph. To the extent a response is required, the allegations are
12 denied. The allegations in Sentence 3 are conclusions of law to which no response is required. To the
13 extent a response is required, Defendants deny any characterization inconsistent with those statutory
14 provisions. The allegations in Sentence 4 are Plaintiffs’ characterization of Permissible Interest on
15 Loans That Are Sold, Assigned, or Otherwise Transferred, 85 Fed. Reg. 33,530 (June 2, 2020) (to be
16 codified at 12 C.F.R. pts. 7, 160) (“OCC Final Rule”), and not allegations of fact for which a response is
17 required. To the extent a response is required, Defendants deny any characterization inconsistent with
18 the OCC Final Rule. The allegations in Sentence 5 and Sentence 6 of this paragraph are denied.

19 2. Sentence 1 of this paragraph, including its footnote, is denied, except to admit that many
20 states, including California, New York and Illinois, have laws regulating maximum interest rates on
21 loans. Sentences 2, 3 and 4 (including the footnote) are characterizations of the rationale for such laws
22 and conclusions from various studies, not allegations of fact for which a response is required. To the
23 extent a response is required, Defendants lack knowledge or information sufficient to form a belief about
24 the truth of the allegations in these Sentences and further, respectfully refer the Court to the cited studies
25 for a full and accurate statement of their contents. To the extent a further response is required, the
26 allegations in these Sentences are denied.

27 3. The allegations in this paragraph, including its footnotes, are Plaintiffs’ characterizations
28

1 of State laws and their purposes and not allegations of fact for which a response is required. Defendants
2 respectfully refer the Court to the cited statutes for a full and accurate statement of their contents. To the
3 extent a response is required, Defendants deny any characterization inconsistent with the cited statutes.

4 4. The allegations in this paragraph, including its footnote, are Plaintiffs' characterizations
5 of 12 U.S.C. §§ 85 and 1463(g), and not allegations of fact for which a response is required. Defendants
6 respectfully refer the Court to the cited statutes for a full and accurate statement of their contents. To the
7 extent a response is required, Defendants deny any characterizations inconsistent with those statutes.
8

9 5. This paragraph is denied, except to admit that the OCC Final Rule was issued June 2,
10 2020 and became effective August 3, 2020 and further, that the citation in the footnote to the Final Rule
11 is accurate. Defendants further deny Plaintiffs' characterizations of the OCC Final Rule and respectfully
12 refer the Court to the OCC Final Rule for a full and accurate statement of its contents.
13

14 6. Sentence 1 of this paragraph, including its footnote, is admitted. Sentences 2-5 contain
15 Plaintiffs' characterizations of the OCC Final Rule and not allegations of fact for which a response is
16 required. Defendants respectfully refer the Court to the OCC Final Rule for a full and accurate
17 statement of its contents. To the extent a response is required, the allegations are denied.

18 7. This paragraph contains Plaintiffs' characterizations of the Final Rule and not allegations
19 of fact for which a response is required. Defendants respectfully refer the Court to the Final Rule and
20 referenced statutes for a full and accurate statement of their contents. To the extent a response is
21 required, the allegations are denied.
22

23 8. The allegation in Sentence 1 is denied. Sentences 2-4 contain Plaintiffs' characterization
24 of the requirements of the statute referenced in the footnotes and not allegations of fact for which a
25 response is required. To the extent a response is required, the allegations are denied.

26 9. The allegations in this paragraph are denied.

27 10. The allegations in this paragraph are denied.
28

1 11. The allegations in this paragraph, including its footnote, are denied.

2 12. The allegations in this paragraph are denied.

3 13. The allegations in this paragraph, including its footnote, consist of conclusions of law to
4 which no response is required. To the extent a response is required, the allegations are denied.

5 **JURISDICTION AND VENUE**

6
7 14. The allegations in this paragraph, including its footnote, consist of conclusions of law
8 regarding jurisdiction, to which no response is required. To the extent a response is required, the
9 allegations are denied.

10 15. The allegations in this paragraph, including its footnote, consist of conclusions of law
11 regarding jurisdiction, to which no response is required. To the extent a response is required, the
12 allegations are denied.

13
14 16. The allegations in this paragraph consist of conclusions of law regarding jurisdiction, to
15 which no response is required. To the extent a response is required, the allegations are denied.

16 17. The allegations in this paragraph consist of conclusions of law regarding venue, to which
17 no response is required. To the extent a response is required, the allegations are denied.

18 **INTRADISTRICT ASSIGNMENT**

19 18. The allegations in this paragraph consist of conclusions of law regarding jurisdiction, to
20 which no response is required. To the extent a response is required, the allegations are denied.

21 **PARTIES**

22
23 19. Admit.

24 20. Admit.

25 21. Admit.

26 22. Admit.

27 23. Admit.
28

ALLEGATIONS

I. NATIONAL BANKS, FEDERAL SAVINGS ASSOCIATIONS, AND STATE-LAW PREEMPTION

24. The allegations in this paragraph, including its footnote, are Plaintiffs’ characterizations of 12 U.S.C. §§ 21, 24, 27, and not allegations of fact for which a response is required. Defendants respectfully refer the Court to these statutory provisions for a full and accurate statement of their contents. To the extent a response is required, Defendants deny any characterization inconsistent with these statutory provisions.

25. The allegations in Sentences 1 and 2 of this paragraph, including its footnotes, are Plaintiffs’ characterizations of the National Bank Act, 12 U.S.C. § 1 *et seq.*, and not allegations of fact for which a response is required. Defendants respectfully refer the Court to this statute for a full and accurate statement of its contents. To the extent a response is required, Defendants deny any characterization inconsistent with this statute. The allegations in Sentence 3 of this paragraph, including its footnote, are Plaintiffs’ characterizations of 12 U.S.C. § 85, and not allegations of fact for which a response is required. Defendants respectfully refer the Court to this statute for a full and accurate statement of its contents. To the extent a response is required, Defendants deny any characterization inconsistent with this statute. The allegations in Sentence 4 of this paragraph are denied except to admit that the OCC regulates national banks consistent with its authority under 12 U.S.C. § 1 *et seq.*

26. The allegations in this paragraph are Plaintiffs’ characterizations of 12 U.S.C. § 85, and not allegations of fact for which a response is required. Defendants respectfully refer the Court to this statute for a full and accurate statement of its contents. To the extent a response is required, Defendants deny any characterization inconsistent with this statute.

27. The allegations in this paragraph, including its footnote, are Plaintiffs’ characterizations of 12 U.S.C. § 85, and not allegations of fact for which a response is required. Defendants respectfully refer the Court to this statute for a full and accurate statement of its contents. To the extent a response is

1 required, Defendants deny any characterization inconsistent with this statute.

2 28. The allegations in this paragraph, including its footnote, are Plaintiffs' characterizations
3 of 12 U.S.C. § 85, and not allegations of fact for which a response is required. Defendants respectfully
4 refer the Court to this statute for a full and accurate statement of its contents. To the extent a response is
5 required, Defendants deny any characterization inconsistent with this statute.
6

7 29. The allegations in Sentence 1 and Sentence 3 of this paragraph, including its footnote, are
8 Plaintiffs' characterization of 12 U.S.C. § 81 and the opinion of the Supreme Court in *Marquette Nat.*
9 *Bank of Minneapolis v. First of Omaha Serv. Corp.*, 439 U.S. 299 (1978), and not allegations of fact for
10 which a response is required. Defendants respectfully refer the Court to this statute and the cited
11 opinion for a full and accurate statement of their contents. To the extent a response is required,
12 Defendants deny any characterization inconsistent with the statute and the Supreme Court decision.
13 Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in
14 Sentence 2 of this paragraph. To the extent a response is required, the allegations are denied.
15

16 30. Sentence 1 is denied, except to admit that Citibank, N.A., and Wells Fargo Bank, N.A.
17 are located in South Dakota, and that the referenced statutes in the footnote indicate that South Dakota
18 does not impose caps on interest rates a bank may charge. The allegations in Sentence 2 are Plaintiffs'
19 characterization of 12 U.S.C. § 85, and not allegations of fact for which a response is required.
20 Defendants respectfully refer the Court to this statute for a full and accurate statement of its contents.
21 To the extent a response is required, Defendants deny any characterization inconsistent with that statute.
22

23 31. The allegations in this paragraph, including its footnotes, are Plaintiffs' characterization
24 of 12 U.S.C. § 1463(g)(1), and not allegations of fact for which a response is required. Defendants
25 respectfully refer the Court to this statute for a full and accurate statement of its contents. To the extent
26 a response is required, Defendants deny any characterization inconsistent with that statutory provision.
27

28 32. The allegations in Sentence 1 and Sentence 2 of this paragraph, including the footnotes,

1 are Plaintiffs' characterization of 12 U.S.C. § 1463(g)(1), and not allegations of fact for which a
2 response is required. Defendants respectfully refer the Court to this statute for a full and accurate
3 statement of its contents. To the extent a response is required, Defendants deny any characterization
4 inconsistent with the statute. The allegations in Sentence 3 of this paragraph, including its footnote, are
5 Plaintiffs' characterizations of an OCC publication, and not allegations of fact for which a response is
6 required. Defendants respectfully refer the Court to the cited OCC publication for a full and accurate
7 statement of its contents. To the extent a response is required, Defendants deny any characterization
8 inconsistent with that OCC publication.
9

10 33. The allegations in this paragraph, including its footnotes, contain Plaintiffs'
11 characterizations of the Second Circuit's opinion in *Madden v. Midland Funding, LLC*, 786 F.3d 246
12 (2d Cir. 2015) and of 12 U.S.C. §§ 85 and 1463,, and not allegations of fact to which a response is
13 required. Defendants respectfully refer the Court to the cited opinion and statutes for a full and accurate
14 statement of their contents. To the extent a response is required, Defendants deny any characterization
15 inconsistent with the cited opinion and statutes.
16

17 **II. THE OCC'S NON-BANK INTEREST RULE**

18 **A. The OCC's Rulemaking**

19 34. Admit, except to deny that the proposed rule is called the Non-bank Interest Rule.

20 35. Defendants admit the allegations in Sentences 1 and 2. The allegations in Sentence 3 of
21 this paragraph are Plaintiffs' characterization of the OCC Final Rule and the FDIC Final Rule, and not
22 allegations of fact for which a response is required. Defendants respectfully refer the Court to these rules
23 for a full and accurate statement of their contents. To the extent a response is required, Defendants deny
24 any characterization inconsistent with these rules.
25

26 36. This paragraph is admitted, except to deny that the final rule is called the Non-bank
27 Interest Rule.
28

1 37. The allegations in this paragraph, including its footnote, consist of conclusions of law to
2 which no response is required. To the extent a response is required, the allegations are denied.

3 38. The allegations in this paragraph, including its footnote, consist of conclusions of law to
4 which no response is required. To the extent a response is required, the allegations are denied.

5 39. The allegations in this paragraph, including its footnotes, are Plaintiffs' characterization
6 of the OCC Final Rule and not allegations of fact for which a response is required. Defendants
7 respectfully refer the Court to the OCC Final Rule for a full and accurate statement of its contents. To
8 the extent a response is required, Defendants deny any characterization inconsistent with the Final Rule.
9

10 40. The allegations in this paragraph, including its footnotes, are Plaintiffs' characterization
11 of the OCC Final Rule and not allegations of fact for which a response is required. Defendants
12 respectfully refer the Court to the OCC Final Rule for a full and accurate statement of its contents. To
13 the extent a response is required, Defendants deny any characterization inconsistent with the Final Rule.
14

15 41. The allegations in this paragraph consist of conclusions of law to which no response is
16 required. To the extent a response is required, the allegations in this are denied.

17 42. The allegations in this paragraph are Plaintiffs' characterization of the 12 U.S.C. §85 and
18 the OCC Final Rule and not allegations of fact for which a response is required. Defendants respectfully
19 refer the Court to the statute and OCC Final Rule for a full and accurate statement of their contents. To
20 the extent a response is required, Defendants deny any characterization inconsistent with the statute or
21 Final Rule.
22

23 43. The allegations in this paragraph are Plaintiffs' characterization of the 12 U.S.C.
24 §1463(g)(1) and the OCC Final Rule and not allegations of fact for which a response is required.
25 Defendants respectfully refer the Court to the statute and OCC Final Rule for a full and accurate
26 statement of their contents. To the extent a response is required, Defendants deny any characterization
27 inconsistent with the statute or Final Rule..
28

1 B. *Madden v. Midland Funding, LLC*

2 44. The allegations in this paragraph, including its footnote, are Plaintiffs' characterization of
3 the OCC Final Rule and not allegations of fact for which a response is required. Defendants respectfully
4 refer the Court to the OCC Final Rule for a full and accurate statement of its contents. To the extent a
5 response is required, Defendants deny any characterization inconsistent with the Final Rule.

6 45. The allegations in this paragraph, including its footnote, are Plaintiffs' characterization of
7 *Madden v. Midland Funding, LLC*, 786 F.3d 246 (2d Cir. 2015) ("*Madden*"), and not allegations of fact
8 for which a response is required. Defendants respectfully refer this Court to the cited decision for a true
9 and accurate statement of its contents. To the extent a response is required, Defendants deny any
10 characterization inconsistent with that decision.

11 46. The allegations in this paragraph, including its footnote, are Plaintiffs' characterization of
12 *Madden*, and not allegations of fact for which a response is required. Defendants respectfully refer this
13 Court to the cited decision for a true and accurate statement of its contents. To the extent a response is
14 required, Defendants deny any characterization inconsistent with that decision.

15 47. The allegations in this paragraph, including its footnotes, are Plaintiffs' characterization
16 of *Madden*, and not allegations of fact for which a response is required. Defendants respectfully refer
17 this Court to the cited decision for a true and accurate statement of its contents. To the extent a response
18 is required, Defendants deny any characterization inconsistent with that decision.

19 48. The allegation in this paragraph, including its footnote, is Plaintiffs' characterization of
20 *Madden*, and not an allegation of fact for which a response is required. Defendants respectfully refer
21 this Court to the cited decision for a true and accurate statement of its contents. To the extent a response
22 is required, Defendants deny any characterization inconsistent with that decision.

23 49. The allegations Sentence 1 of this paragraph are admitted. The allegation in Sentence 2
24 of this paragraph are denied.
25
26
27
28

1 50. The allegations in Sentence 1 of this paragraph are denied. The allegations in Sentence 2
2 of this paragraph, including its footnotes, are Plaintiffs' characterizations of a Petition for a Writ of
3 Certiorari and an Amici Curiae brief, and not allegations of fact for which a response is required.
4 Defendants respectfully refer this Court to the cited Writ of Certiorari and Amici Curiae brief for a true
5 and accurate statement of their contents. To the extent a response is required, Defendants deny any
6 characterizations inconsistent with the referenced documents.
7

8 51. The allegation in this paragraph is denied.

9 52. The allegations in Sentence 1 of this paragraph are Plaintiffs' characterization of
10 *Madden*, and not allegations of fact for which a response is required. Defendants respectfully refer this
11 Court to the cited decision for a true and accurate statement of its contents. To the extent a response is
12 required, Defendants deny any characterization inconsistent with that decision. The allegations in
13 Sentence 2 of this paragraph, including its footnote, consist of Plaintiffs' characterization of a
14 *Washington Post* article, and not allegations of fact for which a response is required. To the extent a
15 response is required, the allegations are denied.
16

17 53. The allegations in this paragraph, including its footnotes, are Plaintiffs' characterization
18 of written testimony from former Comptroller Joseph Otting before the House Financial Services
19 Committee, and not allegations of fact for which a response is required. Defendants respectfully refer
20 this Court to the cited written testimony for a true and accurate statement of its contents. To the extent a
21 response is required, Defendants deny any characterization inconsistent with that written testimony.
22

23 54. The allegations in this paragraph, including its footnote, are Plaintiffs' characterization of
24 the FDIC's Final Rule, and not allegations of fact for which a response is required. Defendants
25 respectfully refer this Court to the FDIC's Final Rule for a true and accurate statement of its contents.
26 To the extent a response is required, Defendants deny any characterization inconsistent with the FDIC's
27 Final Rule.
28

1 **C. The Rule Adopts a “Doctrine” That Is Invalid**

2 55. The allegations in Sentence 1 of this paragraph are Plaintiffs’ characterization of the
3 OCC’s Final Rule, and not allegations of fact for which a response is required. Defendants respectfully
4 refer this Court to the OCC’s Final Rule for a true and accurate statement of its contents. To the extent a
5 response is required, Defendants deny any characterization inconsistent with the OCC’s Final Rule. The
6 allegations in Sentence 2 of this paragraph, including its footnote, consist of conclusions of law to which
7 no response is required. To the extent a response is required, the allegations are denied.
8

9 56. The allegations in this paragraph are denied, except to admit that *Madden* conflicts with
10 the “valid-when-made” principles.

11 57. The allegations in this paragraph are Plaintiffs’ characterization of the OCC’s Final Rule,
12 and not allegations of fact for which an answer is required. Defendants respectfully refer this Court to
13 the OCC’s Final Rule for a true and accurate statement of its contents. To the extent a response is
14 required, Defendants deny any characterization inconsistent with that Rule.
15

16 58. The allegations in this paragraph are denied.

17 59. The allegation in Sentence 1 of this paragraph is denied. Defendants admit that the
18 quotation in Sentence 2 is an accurate quote but deny that it supports the allegation in Sentence 1.

19 60. The allegations in Sentences 1, 2 and 6 of this paragraph are denied. The allegations in
20 Sentences 3, 4 and 5 of this paragraph, including the footnotes, consist of conclusions of law to which
21 no response is required. To the extent a response is required, the allegations are denied.
22

23 61. The allegations in Sentence 1 of this paragraph, including its footnote, are Plaintiffs’
24 characterization of the OCC’s Final Rule, and not allegations of fact for which an answer is required.
25 Defendants respectfully refer this Court to the OCC’s Final Rule for a true and accurate statement of its
26 contents. To the extent a response is required, Defendants deny any characterization inconsistent with
27 that Rule. The allegations in Sentence 2 and 3 of this paragraph consist of conclusions of law to which
28

1 no response is required. To the extent a response is required, the allegations are denied. The
2 allegations contained in Sentence 4 of this paragraph, including its footnote, are denied, except to admit
3 that the OCC has discussed the principles of “valid-when-made” in previous legal briefs.

4 62. The allegations in this paragraph, including its footnotes, consist of Plaintiffs’
5 characterizations of the referenced *amicus curiae* brief and not allegations of fact to which a response is
6 required. To the extent a response is required, the allegations are denied, except to admit that the quoted
7 language in this paragraph is accurately quoted.
8

9 63. The allegations in this paragraph consist of conclusions of law to which no response is
10 required. To the extent a response is required, the allegations are denied.

11 64. The allegations in this paragraph, including its footnotes, consist of conclusions of law
12 and Plaintiffs’ characterization of two Supreme Court cases, for which no response is required.
13 Defendants respectfully refer the Court to the cited opinions for a full and accurate statement of their
14 contents. To the extent a response is required, Defendants deny any characterizations inconsistent with
15 these opinions and deny all other allegations in the paragraph.
16

17 65. The allegations in this paragraph consist of conclusions of law to which no response is
18 required. To the extent a response is required, the allegations are denied.

19 66. Sentence 1 of this paragraph is not an allegation of fact to which a response is required.
20 To the extent a response is required, the allegation in Sentence 1 is denied. Sentences 2 through 5 of this
21 paragraph consist of a hypothetical and conclusions of law to which no response is required. To the
22 extent a response is required, the allegations are denied. The allegations in Sentences 6 through 8 of this
23 paragraph consist of Plaintiffs’ characterization of two Supreme Court cases, and not allegations of fact
24 for which a response is required. Defendants respectfully refer the Court to the cited opinions for a full
25 and accurate statement of their contents. To the extent a response is required, Defendants deny any
26 characterization in Sentences 6 through 8 inconsistent with these opinions.
27
28

1 67. The allegations in this paragraph are Plaintiffs' characterization of two Supreme Court
2 cases, and not allegations of fact for which a response is required. Defendants respectfully refer the
3 Court to the cited opinions for a full and accurate statement of their contents. To the extent a response is
4 required, Defendants deny any characterization in this paragraph inconsistent with these opinions.

5 68. The allegations in this paragraph, including its footnote, consist of conclusions of law and
6 Plaintiffs' characterization of a Supreme Court case, and not allegations of fact for which a response is
7 required. Defendants respectfully refer the Court to the cited opinion for a full and accurate statement of
8 its contents. To the extent a response is required, Defendants deny any characterization inconsistent
9 with this opinion and deny all other allegations in this paragraph.
10

11
12 **D. The OCC's Rule Gives the Financial Industry What It Failed To Wrest from the**
13 **Courts or Congress**

14 69. Defendants lack knowledge or information sufficient to form a belief about the truth of
15 the allegations in this paragraph, including its footnote. To the extent a response is required, the
16 allegations are denied.

17 70. The allegations in Sentences 1 and 2 of the paragraph, including the footnote, consist of
18 Plaintiffs' characterizations of legal positions taken by various trade groups, and not allegations of fact
19 for which a response is required. To the extent a response is required, the allegations are denied.
20 Defendants deny the allegations in Sentences 3 and 4 of this paragraph, except to admit that Defendants
21 filed an Amicus Brief in *Rent-Rite Super Kegs West Ltd. v. World Business Lenders, LLC*, No. 19-cv-
22 01552 (D. Colo. Sept. 10, 2019). The allegations in Sentence 5 of the paragraph, including its footnote,
23 are denied, except to admit that the Second Circuit declined to reconsider *Madden* and the Supreme
24 Court denied *certiorari*. Defendants respectfully refer the Court to the cited opinions for a full and
25 accurate statement of their contents. Defendants deny any characterization inconsistent with these
26 decisions.
27
28

1 71. The allegations in Sentence 1 of this paragraph are denied, except to admit that Congress
2 did not enact the Protecting Consumers’ Access to Credit Act of 2017. The remaining allegations of this
3 paragraph, including its footnote, consist of Plaintiffs’ characterization of the Protecting Consumers’
4 Access to Credit Act of 2017 and the OCC’s Final Rule, and not allegations of fact for which a response
5 is required. Defendants respectfully refer the Court to the cited proposed legislation and OCC’s Final
6 Rule for a full and accurate statement of their contents. To the extent a response is required, Defendants
7 deny any characterization inconsistent with the proposed legislation and OCC’s Final Rule.
8

9 72. Defendants deny this paragraph, except to admit that Congress did not enact the
10 Protecting Consumers’ Access to Credit Act of 2017.

11 73. The allegations in this paragraph, including its footnote, contain Plaintiffs’
12 characterization of congressional actions and the cited statute, and not allegations of fact for which a
13 response is required. Defendants respectfully refer the Court to the statute for a full and accurate
14 statement of its contents. To the extent a response is required, Defendants deny any characterization
15 inconsistent with the statute.
16

17 74. This allegations in this paragraph are Plaintiffs’ characterization of actions taken by the
18 financial services industry and the OCC, and not allegations of fact to which a response is required. To
19 the extent a response is required, the allegations are denied.
20

21 **III. THE STATES HAVE STANDING TO CHALLENGE THE OCC’S RULE**

22 75. The allegations in this paragraph consist of conclusions of law to which no response is
23 required. To the extent a response is required, the allegations are denied.

24 **A. The OCC’s Rule Harms the States’ Sovereign Interests**

25 76. The allegations in this paragraph consist of conclusions of law to which no response is
26 required. To the extent a response is required, the allegations are denied.
27
28

1 77. The allegations in this paragraph, including its footnotes, consist of conclusions of law to
2 which no response is required. To the extent a response is required, the allegations are denied.

3 78. The allegations in Sentences 1 and 3 of this paragraph consist of Plaintiffs'
4 characterization of the OCC's Final Rule and not allegations of fact for which a response is required.
5 Defendants respectfully refer the Court to the OCC's Final Rule for a true and accurate statement of its
6 contents. To the extent a response is required, Defendants deny any characterization inconsistent with
7 the OCC's Final Rule. The allegations in Sentence 2 of this paragraph consist of conclusions of law to
8 which no response is required. To the extent a response is required, the allegations are denied.

9 79. The allegations in Sentence 1 of this paragraph consist of conclusions of law to which no
10 response is required. To the extent a response is required, the allegations are denied. The allegations in
11 Sentences 2 and 3 of this paragraph consist of Plaintiffs' characterization of "rent-a-bank schemes"
12 and not allegations of fact to which a response is required. To the extent a response is required, the
13 allegations are denied.
14

15 80. The allegations in Sentence 1 of this paragraph, including its footnote, are denied. The
16 allegations in Sentence 2 of this paragraph consist of conclusions of law to which no response is
17 required. To the extent a response is required, the allegations are denied.
18

19 81. The allegations in this paragraph, including its footnotes, consist of Plaintiffs'
20 characterization of 12 U.S.C. §§ 25b, 85, and 1463(g)(1), and not allegations of fact for which a
21 response is required. Defendants respectfully refer the Court to these statutory provisions for a full and
22 accurate statement of their contents. To the extent a response is required, Defendants deny any
23 characterization inconsistent with those statutory provisions.
24

25 **1. California's Rate Caps and Anti-Evasion Laws**

26 82. The allegations in this paragraph, including its footnotes, consist of Plaintiffs'
27 characterization of the California Financing Law ("CFL"), the California Deferred Deposit Transaction
28

1 Law (“CDDTL”), the California Unfair Competition Law (“CUCL”), and California’s unconscionability
2 jurisprudence, and not allegations of fact for which a response is required. Defendants respectfully refer
3 the Court to these authorities for a true and accurate statement of their contents. To the extent a
4 response is required, Defendants deny any characterization inconsistent with those statutes.

5
6 83. The allegations in this paragraph, including its footnotes, consist of Plaintiffs’
7 characterization of the CFL and not allegations of fact for which a response is required. To the extent a
8 response is required, Defendants deny any characterization inconsistent with statute.

9
10 84. The allegations in this paragraph, including its footnotes, consist of Plaintiffs’
11 characterization of the CFL and not allegations of fact for which a response is required. To the extent a
12 response is required, Defendants deny any characterization inconsistent with the statute.

13
14 85. The allegations in this paragraph, including its footnotes, consist of Plaintiffs’
15 characterization of the CFL and a 2018 CFL-Annual Report, and not allegations of fact for which a
16 response is required. Defendants respectfully refer the Court to the CFL and Annual Report for a true
17 and accurate statement of their contents. To the extent a response is required, Defendants deny any
18 characterization inconsistent with the statute or annual report.

19
20 86. The allegations in this paragraph, including its footnote, consist of Plaintiffs’
21 characterization of CFL, and not allegations of fact for which a response is required. Defendants
22 respectfully refer the Court to the CFL for a true and accurate statement of its contents. To the extent a
23 response is required, Defendants admit that the CFL places limits on the interest rates charged on certain
24 loans described in that statute, consistent with federal law.

25
26 87. The allegations in this paragraph, including its footnotes, consist of Plaintiffs’
27 characterizations of the CFL and legislative history, and not allegations of fact for which a response is
28 required. Defendants respectfully refer the Court to the CFL for a true and accurate statement of its

1 contents. To the extent a response is required, Defendants deny any characterization inconsistent with
2 that statute or its legislative history.

3 88. The allegations in this paragraph, including its footnotes, consist of Plaintiffs'
4 characterizations of the CDDTL, and not allegations of fact for which a response is required.
5 Defendants respectfully refer the Court to the CDDTL for a true and accurate statement of its contents.
6 To the extent a response is required, Defendants deny any characterization inconsistent with the
7 CDDTL.
8

9 89. The allegations in Sentence 1 of this paragraph are denied. The remaining allegations in
10 this paragraph, including its footnotes, consist of Plaintiffs' characterization of a Comment submitted by
11 several Senators in response to the OCC's notice of proposed rulemaking, and are not allegations of fact
12 to which a response is required. Defendants respectfully refer the Court to the cited Comment for a true
13 and accurate statement of its contents. To the extent a response is required, Defendants deny any
14 characterization inconsistent with the cited Comment.
15

16 90. The allegations in this paragraph, including its footnote, consist of Plaintiffs'
17 characterization of, and a quote from, a comment letter submitted as part of the rulemaking process, and
18 not allegations of fact for which a response is required. Defendants respectfully refer this Court to that
19 document, which is part of the administrative record, for a true and accurate statement of its contents.
20 To the extent a response is required, Defendants deny any characterization inconsistent with the
21 referenced document.
22

23 91. The allegations in this paragraph, including its footnote, consist of Plaintiffs'
24 characterization of comments submitted as part of the rulemaking process and not allegations of fact for
25 which a response is required. Defendants respectfully refer this Court to the referenced documents,
26 which are part of the administrative record, for a true and accurate statement of their contents. To the
27
28

1 extent a response is required, Defendants deny any characterization inconsistent with the referenced
2 documents.

3 92. The allegations in this paragraph constitute Plaintiffs' characterization of the effects of
4 the OCC Final Rule and not allegations of fact to which a response is required. To the extent a response
5 is required, the allegations are denied.
6

7 93. The allegations in Sentence 1 of this paragraph consist of conclusions of law to which no
8 response is required. To the extent a response is required, Defendants admit that the State of California
9 licenses and governs the activities of certain lenders and other financial entities operating in California.
10 The allegations in Sentences 2 and 3 of this paragraph, including its footnote, consist of Plaintiffs'
11 characterization of a comment submitted as part of the rulemaking process and not an allegation of fact
12 for which a response is required. Defendants respectfully refer this Court to the referenced document,
13 which is part of the administrative record, for a true and accurate statement of its contents. To the extent
14 a response is required, Defendants deny any characterization inconsistent with the referenced
15 documents.
16

17 94. The allegations in this paragraph are denied.

18 **2. Illinois' Regulations Governing Low-Dollar, High-Cost Loans**

19 95. The allegations in this paragraph are admitted.

20 96. Defendants lack knowledge or information sufficient to form a belief about the truth of
21 the allegations in Sentences 1 and 2 of this paragraph. To the extent a response is required, the
22 allegations are denied. The allegations in Sentence 3 of this paragraph consist of Plaintiffs'
23 characterization of Illinois' Payday Loan Reform Act ("PLRA"), and not allegations of fact for which a
24 response is required. Defendants respectfully refer the Court to the PLRA for a true and accurate
25 statement of its contents. To the extent a response is required, Defendants deny any characterization
26 inconsistent with the PLRA's provisions.
27
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1 97. The allegations in this paragraph, including its footnote, consist of Plaintiffs’
2 characterization of the PLRA, and not allegations of fact for which a response is required. Defendants
3 respectfully refer the Court to the PLRA for a true and accurate statement of its contents. To the extent
4 a response is required, Defendants deny any characterization inconsistent with the PLRA’s provisions.

5 98. The allegations in this paragraph, including its footnotes, consist of Plaintiffs’
6 characterization of the PLRA, and not allegations of fact for which a response is required. Defendants
7 respectfully refer the Court to the PLRA for a true and accurate statement of its contents. To the extent
8 a response is required, Defendants deny any characterization inconsistent with the PLRA’s provisions.

9 99. The allegations in this paragraph, including its footnote, consist of Plaintiffs’
10 characterization of the PLRA, and not allegations of fact for which a response is required. Defendants
11 respectfully refer the Court to the PLRA for a true and accurate statement of its contents. To the extent
12 a response is required, Defendants deny any characterization inconsistent with the PLRA’s provisions.
13

14 100. The allegations in this paragraph, including its footnote, consist of Plaintiffs’
15 characterization of the PLRA, and not allegations of fact for which a response is required. Defendants
16 respectfully refer the Court to the PLRA for a true and accurate statement of its contents. To the extent
17 a response is required, Defendants deny any characterization inconsistent with the PLRA’s provisions.
18

19 101. Defendants lack knowledge or information sufficient to form a belief about the truth of
20 the allegations in Sentence 1 of this paragraph. To the extent a response is required, the allegations are
21 denied. The allegations in Sentences 2 and 3 of this paragraph consist of Plaintiffs’ characterization of
22 Illinois’ Consumer Installment Loan Act (“CILA”), and not allegations of fact to which a response is
23 required. Defendants respectfully refer the Court to the CILA for a true and accurate statement of its
24 contents. To the extent a response is required, Defendants deny any characterization inconsistent with
25 the CILA’s provisions.
26
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28

1 102. The allegations in this paragraph, including its footnote, consist of Plaintiffs’
2 characterization of the CILA, and not allegations of fact to which a response is required. Defendants
3 respectfully refer the Court to the CILA for a true and accurate statement of its contents. To the extent a
4 response is required, Defendants deny any characterization inconsistent with the CILA’s provisions.

5 103. The allegations in this paragraph, including its footnote, consist of Plaintiffs’
6 characterization of the CILA, and not allegations of fact for which a response is required. Defendants
7 respectfully refer the Court to the CILA for a true and accurate statement of its contents. To the extent a
8 response is required, Defendants deny any characterization inconsistent with the CILA’s provisions.

9 104. The allegations in this paragraph consist of Plaintiffs’ characterization of the PLRA and
10 the CILA, and not allegations of fact for which a response is required. Defendants respectfully refer the
11 Court to these statutes for a true and accurate statement of their contents. To the extent a response is
12 required, Defendants deny any characterization inconsistent with these statutes’ provisions.

13 105. The allegations in this paragraph, including its footnote, consist of Plaintiffs’
14 characterization of the CILA and the Illinois Financial Services Development Act (“FSDA”), and not
15 allegations of fact for which a response is required. Defendants respectfully refer the Court to these
16 statutes for a true and accurate statement of their contents. To the extent a response is required,
17 Defendants deny any characterization inconsistent with these statutes’ provisions.

18 106. The allegations in this paragraph consist of Plaintiffs’ characterization of the PLRA,
19 CILA, and FSDA, and not allegations of fact for which a response is required. Defendants respectfully
20 refer the Court to these statutes for a true and accurate statement of their contents. To the extent a
21 response is required, Defendants deny any characterization inconsistent with these statutes’ provisions.

22 107. The allegations in this paragraph, including its footnotes, consist of Plaintiffs’
23 characterizations of Section 2Z of the Illinois Consumer Fraud and Deceptive Business Practices Act
24 (“Consumer Fraud Act”) and the PLRA, and not allegations of fact for which a response is required.

1 Defendants respectfully refer the Court to the Consumer Fraud Act and PLRA for a true and accurate
2 statement of their contents. To the extent a response is required, Defendants deny any characterizations
3 inconsistent with these statutes' provisions.

4 108. The allegations in this paragraph, including its footnote, consists of Plaintiffs'
5 characterization of the PLRA, and not allegations of fact for which a response is required. Defendants
6 respectfully refer the Court to the PLRA for a true and accurate statement of its contents. To the extent
7 a response is required, Defendants deny any characterization inconsistent with the PLRA's provisions.
8

9 109. The allegations in this paragraph constitute Plaintiffs' characterization of the effects of
10 the OCC Final Rule and not allegations of fact to which a response is required. To the extent a response
11 is required, the allegations are denied.

12 110. The allegations in Sentence 1 of this paragraph consist of conclusions of law to which no
13 response is required. To the extent a response is required, Defendants admit that the State of Illinois
14 licenses and governs the activities of certain lenders and other financial entities operating in Illinois.
15 The allegations in Sentences 2 and 3 of this paragraph, including its footnote, consist of Plaintiffs'
16 characterization of a comment submitted as part of the rulemaking process and not an allegation of fact
17 for which a response is required. Defendants respectfully refer this Court to the referenced document,
18 which is part of the administrative record, for a true and accurate statement of its contents. To the extent
19 a response is required, Defendants deny any characterization inconsistent with the referenced document.
20
21

22 111. The allegations in this paragraph are denied.

23 **3. New York's Usury Laws**

24 112. The allegations in this paragraph, including its footnotes, consist of Plaintiffs'
25 characterization of New York General Obligation Law §§ 5-501 and 5-511, New York Banking Law
26 §§ 14-a, 340, and 356, and New York Penal Law §§ 190.40 and 190.42, and not allegations of fact for
27 which a response is required. Defendants respectfully refer the Court to these statutory provisions for a
28

1 true and accurate statement of their contents. To the extent a response is required, Defendants deny any
2 characterization inconsistent with these authorities.

3 113. The allegations in this paragraph, including its footnotes, consist of Plaintiffs'
4 characterization of New York Banking Law §§ 340 and 356, as well as several federal court decisions,
5 and not allegations of fact for which a response is required. Defendants respectfully refer the Court to
6 these authorities for a true and accurate statement of their contents. To the extent a response is required,
7 Defendants deny any characterization inconsistent with these authorities.
8

9 114. Defendants lack knowledge or information sufficient to form a belief about the truth of
10 the allegations in this paragraph. To the extent a response is required, the allegations are denied.

11 115. The allegations in this paragraph consist of Plaintiffs' characterization of the New York
12 Executive Law § 63(12), and not allegations of fact for which a response is required. Defendants
13 respectfully refer the Court to that statutory provision for a true and accurate statement of its contents.
14 To the extent a response is required, Defendants deny any characterization inconsistent with that
15 statutory provision.
16

17 116. The allegations in this paragraph, including its footnotes, consist of Plaintiffs'
18 characterization of legal actions taken by the New York Attorney General, and not allegations of fact to
19 which an answer is required. To the extent a response is required, the allegations are denied, except to
20 admit that Plaintiffs do reference cases that relate to usury laws and a press release relating to a
21 \$5.2 million settlement.
22

23 117. The allegations in this paragraph, including its footnote, consist of Plaintiffs'
24 characterization of New York Financial Services Law §§ 101 *et seq.* and New York Banking Law § 14a,
25 and not allegations of fact for which a response is required. Defendants respectfully refer the Court to
26 these statutory provisions for a true and accurate statement of their contents. To the extent a response is
27 required, Defendants deny any characterization inconsistent with these statutory provisions.
28

1 118. The allegations in this paragraph, including its footnote, consist of Plaintiffs'
2 characterization of New York Financial Services Law §§ 101 *et seq.*, and not allegations of fact for
3 which response is required. Defendants respectfully refer the Court to these statutory provisions for a
4 true and accurate statement of their contents. To the extent a response is required, Defendants deny any
5 characterization inconsistent with these statutory provisions.
6

7 **B. The OCC's Rule Harms the State's Quasi-Sovereign Interests**

8 119. The allegations in this paragraph are conclusions of law and not allegations of fact to
9 which a response is required. To the extent a response is required, the allegations are denied.

10 120. The allegations in Sentence 1 of this paragraph are conclusions of law and not allegations
11 of fact to which a response is required. To the extent a response is required, the allegations are denied.
12 The allegations in Sentences 2-4, including the footnotes, consist of Plaintiffs' characterization of
13 various court opinions and statutory provisions, not allegations to which a response is required.
14 Defendants respectfully refer this Court to those authorities for a true and accurate statement of their
15 contents. To the extent a response is required, Defendants deny any characterization inconsistent with
16 those authorities.
17

18 121. The allegations in Sentence 1 of this paragraph consist of conclusions of law and
19 Plaintiffs' characterization of a comment letter submitted as part of the rulemaking process, , and not
20 allegations of fact for which a response is required. Defendants respectfully refer this Court to that
21 document, which is part of the administrative record, for a true and accurate statement of its contents.
22 Defendants also deny any characterization inconsistent with the referenced document. Defendants lack
23 knowledge or information sufficient to form a belief about the truth of the allegations in Sentence 2 of
24 this paragraph. To the extent a response is required, the allegations are denied. The allegations in
25 Sentence 3 of this paragraph, including its footnote, are denied.
26
27
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1 122. The allegation in Sentence 1 of this paragraph consists of a conclusion of law and not an
2 allegation of fact to which a response is required. To the extent a response is required, the allegation is
3 denied. The allegations in Sentences 2-4 of this paragraph, including the footnotes, constitute Plaintiffs
4 characterizations of law review articles and studies, and not allegations of fact to which a response is
5 required. To the extent a response is required, the allegations are denied.
6

7 123. The allegation in Sentence 1 of this paragraph consists of a conclusion of law and not an
8 allegation of fact to which a response is required. To the extent a response is required, the allegation is
9 denied. The allegations in Sentence 2 of this paragraph, including its footnotes, are admitted. The
10 allegations in Sentence 3 are denied.

11 124. The allegations in Sentences 1, 2, and 4 of this paragraph are conclusions of law and not
12 allegations of fact to which a response is required. To the extent a response is required, the allegations
13 in Sentences 1, 2, and 4 are denied. The allegations in Sentence 3 of this paragraph, including its
14 footnote, consist of Plaintiffs' characterization of a comment letter submitted as part of the rulemaking
15 process, and not allegations of fact for which a response is required. Defendants respectfully refer this
16 Court to that document, which is part of the administrative record, for a true and accurate statement of
17 its contents. To the extent a response is required, Defendants deny any characterization inconsistent
18 with the referenced document.
19

20 125. The allegation in Sentence 1 of this paragraph is admitted. The allegations in Sentence 2
21 of this paragraph consist of conclusions of law to which no response is required. To the extent a
22 response is required, the allegations are denied. The allegations in Sentence 3 of this paragraph consist
23 of Plaintiffs' characterization of 12 U.S.C. §§ 85 and 1463(g)(1), and not allegations of fact for which a
24 response is required. Defendants respectfully refer the Court to these statutory provisions for a full and
25 accurate statement of their contents. To the extent a response is required, Defendants deny any
26 characterization inconsistent with those statutory provisions.
27
28

1 126. The allegations in Sentence 1 of this paragraph consist of conclusions of law to which no
2 response is required. To the extent a response is required, the allegations are denied. The allegations in
3 Sentences 2 and 3 of this paragraph, including its footnote, consist of Plaintiffs' characterizations of
4 12 U.S.C. §§ 85, 86, and 1463(g), and not allegations to which a response is required. Defendants
5 respectfully refer this Court to these statutory provisions for a true and accurate statement of their
6 contents. To the extent a response is required, Defendants deny any characterization inconsistent with
7 those statutory provisions. The allegations in Sentence 4 of this paragraph consist of conclusions of law
8 to which no response is required. To the extent a response is required, the allegations are denied.

10 **C. The OCC's Rule Harms the States' Fiscal Interest**

11 127. The allegations in Sentence 1 of this paragraph consist of conclusions of law to which no
12 response is required. To the extent a response is required, the allegations are denied. The allegations in
13 Sentences 2 consist of Plaintiffs' characterization of various state laws referenced elsewhere in the
14 Complaint, and not allegations of fact to which a response is required. Defendants respectfully refer this
15 Court to those state laws for a true and accurate statement of their contents. To the extent a response is
16 required, Defendants deny any characterization inconsistent with those state laws. The allegations in
17 sentence 3 is denied, except to admit that the States have authority to enforce compliance with their
18 state's lending laws with respect to institutions that fall within their jurisdiction. The allegations in
19 Sentence 4 consists of Plaintiffs' characterization of, and partial quotation from, a comment letter
20 submitted as part of the rulemaking process, and not allegations of fact for which a response is required.
21 Defendants respectfully refer this Court to that document, which is part of the administrative record, for
22 a true and accurate statement of its contents. To the extent a response is required, Defendants deny any
23 characterization inconsistent with the referenced document.

26 128. Defendants lack knowledge or information sufficient to form a belief about the truth of
27 the allegations in Sentence 1 of this paragraph, including its footnote. To the extent a response is
28

1 required, the allegations are denied. The allegations in Sentence 2 of this paragraph consist of
2 conclusions of law to which no response is required. To the extent a response is required, the allegations
3 are denied.

4 129. The allegations in this paragraph, including its footnote, consist of conclusions of law to
5 which no response is required. To the extent a response is required, the allegations in this paragraph are
6 denied.

7
8 **IV. THE NON-BANK INTEREST RULE IS LEGALLY PROCEDURALLY, AND SUBSTANTIVELY
9 UNSOUND**

10 **A. The OCC's Non-bank Interest Rule Is Contrary to the Plain Language of §§ 85 and
11 1463(g)(1)**

12 130. The allegations in this paragraph, including its footnotes, consist of Plaintiffs'
13 characterizations and quotations of Supreme Court and D.C. Circuit opinions, and not allegations of fact
14 to which a response is required. Defendants respectfully refer this Court to these opinions for a true and
15 accurate statement of their contents. To the extent a response is required, Defendants deny any
16 characterization inconsistent with those opinions.

17 131. The allegations in this paragraph consist of Plaintiffs' characterization of 12 U.S.C. §§ 85
18 and 1463(g), and not allegations to which a response is required. Defendants respectfully refer this
19 Court to these statutory provisions for a true and accurate statement of their contents. To the extent a
20 response is required, Defendants deny any characterization inconsistent with those statutory provisions.

21 132. The allegations in this paragraph consist of Plaintiffs' characterization of 12 U.S.C. §§ 85
22 and 1463(g), and not allegations to which a response is required. Defendants respectfully refer this
23 Court to these statutory provisions for a true and accurate statement of their contents. To the extent a
24 response is required, Defendants deny any characterization inconsistent with those statutory provisions.

25 133. The allegations in this paragraph including its footnote are denied, except to admit that
26 the OCC did rely on 12 U.S.C. §§ 85 and 1463(g)(1) in issuing the Final Rule.
27
28

1 134. The allegations in this paragraph are Plaintiffs' characterization of the OCC Final Rule,
2 and not allegations of fact for which a response is required. Defendants respectfully refer the Court to
3 these rules for a full and accurate statement of their contents. To the extent a response is required,
4 Defendants deny any characterization inconsistent with these rules.

5 135. The allegations in Sentence 1 of this paragraph consist of conclusions of law to which no
6 response is required. To the extent a response is required, Defendants admit that administrative agencies
7 have authority to construe ambiguous statutes they are charged with administering. The allegations in
8 Sentence 2 of this paragraph are denied.

9 136. The allegations in Sentences 1 and 2 of this paragraph, including its footnotes, consist of
10 conclusions of law to which no response is required. To the extent a response is required, the allegations
11 are denied. The allegations in Sentence 3 of this paragraph, including its footnote, is a quotation from a
12 Supreme Court opinion, and not allegations of fact for which a response is required. Defendants
13 respectfully refer the Court to the cited opinion for a full and accurate statement of its contents. To the
14 extent a response is required, Defendants deny any characterization in Sentence 3 inconsistent with this
15 opinion.

16 137. The allegations in this paragraph, including its footnote, consist of conclusions of law to
17 which no response is required. To the extent a response is required, the allegations are denied.

18 **B. The OCC's Rule Is Contrary to the Statutory Framework Governing National Banks**
19 **and Federal Savings Associations**

20 **1. The OCC's Rule Ignores Federal Law That Shows That §§ 85 and 1463(g)(1) Apply**
21 **Only to Federally Chartered Banks**

22 138. The allegations in this paragraph, including its footnote, is a quotation from a Supreme
23 Court opinion, and not allegations of fact to which a response is required. Defendants respectfully refer
24 the Court to the cited opinion for a true and accurate statement of its contents. To the extent a response
25 is required, Defendants deny any characterization inconsistent with the referenced opinion.

1 139. The allegations in this paragraph, including its footnote, consist of conclusions of law to
2 which no response is required. To the extent a response is required, the allegations are denied.

3 140. The allegations in Sentences 1-3 of this paragraph, including its footnotes, consist of
4 conclusions of law to which no response is required. To the extent a response is required, the allegations
5 are denied. The allegations in Sentence 4 of this paragraph are denied.

6 141. The allegations in this paragraph, including its footnote, consist of conclusions of law to
7 which no response is required. To the extent a response is required, the allegations are denied.

8 142. The allegations in this paragraph, including its footnote, consist of conclusions of law to
9 which no response is required. To the extent a response is required, the allegations are denied.

10 143. The allegations in Sentence 1 and 5 of this paragraph are denied. The allegations in
11 Sentences 2, 3 and 4, including the footnote, consist of conclusions of law, and not allegations of fact to
12 which a response is required. To the extent a response is required, the allegations are denied.

13 144. The allegations this paragraph consist of conclusions of law and not allegations of fact to
14 which a response is required. To the extent a response is required, the allegations are denied.

15 145. The allegations in this paragraph, including its footnote, consist of conclusions of law to
16 which no response is required. To the extent a response is required, the allegations are denied.

17 **2. The OCC Relies on Statutory Provisions That Provide No Support for Its Rule**

18 146. The allegations in this paragraph, including its footnote, are denied.

19 147. The allegations in Sentences 1 through 4 of this paragraph consist of Plaintiffs'
20 characterization of the OCC's rationale for the Final Rule, and not allegations of fact for which a
21 response is required. Defendants respectfully refer the Court to the Final Rule for a true and accurate
22 statement of its contents. To the extent a response is required, Defendants deny any characterization
23 inconsistent with the Final Rule. The allegation in Sentence 5 of this paragraph is a conclusion of law
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1 and not an allegation of fact to which a response is required. To the extent a response is required, the
2 allegation is denied.

3 148. The allegations in this paragraph are denied.

4 149. The allegations in Sentence 1 of this paragraph are denied. The remainder of this
5 paragraph is a quotation from a comment letter submitted as part of the rulemaking process, and not
6 allegations of fact for which a response is required. Defendants respectfully refer this Court to that
7 document, which is part of the administrative record, for a true and accurate statement of its contents.
8 To the extent a response is required, Defendants deny any characterization inconsistent with the
9 referenced document.
10

11 150. The allegations in Sentence 1 of this paragraph are denied. The allegations in Sentences
12 2 and 3 of this paragraph, including its footnote, consist of Plaintiffs' characterization of state law and
13 the Second Circuit's *Madden* decision, and not allegations of fact for which a response is required.
14 Defendants respectfully refer this court to those authorities for a true and accurate statement of their
15 contents. To the extent a response is required, Defendants deny any characterization inconsistent with
16 those authorities.
17

18 151. The allegations in this paragraph, including its footnotes, consist of conclusions of law to
19 which no response is required. To the extent a response is required, the allegations are denied.
20

21 152. The allegations in this paragraph, including its footnote, consist of conclusions of law to
22 which no response is required. To the extent a response is required, the allegations are denied.

23 **C. The OCC's Rule Impermissibly Preempts State Law**

24 **1. The OCC's Rule Is a Preemption Determination**

25 153. The allegation in Sentence 1 of this paragraph consists of a conclusion of law to which no
26 response is required. To the extent a response is required, the allegation is denied. The allegation in
27 Sentence 2 consists of Plaintiffs' characterization of the OCC's Final Rule, and not an allegation of fact
28

1 for which a response is required. To the extent a response is required, Defendants deny any
2 characterization inconsistent with the OCC Final Rule.

3 154. The allegations in this paragraph, including its footnote, consist of Plaintiffs'
4 characterization of the OCC's Final Rule, and not an allegation of fact for which a response is required.
5 To the extent a response is required, Defendants deny any characterization inconsistent with the OCC
6 Final Rule..

7
8 155. The allegations in Sentence 1 of this paragraph, including its footnote, consists of
9 Plaintiffs' characterization of the OCC's Final Rule, and not allegations of fact for which a response is
10 required. To the extent a response is required, Defendants deny any characterization inconsistent with
11 the OCC Final Rule. The allegations in Sentence 2, including its footnote, consist of conclusions of law
12 to which no response is required. To the extent a response is required, the allegations are denied.

13
14 **2. The OCC's Rule Is Contrary to Congress's Clear and Manifest Purpose and the
Presumption Against Preemption**

15 156. The allegations in this paragraph, including its footnote, consist of conclusions of law to
16 which no response is required. To the extent a response is required, the allegations are denied.

17
18 157. The allegations in Sentence 1 of this paragraph, including the footnote, are Plaintiffs'
19 characterization of consumer-protection laws and not an allegation of fact for which a response is
20 required. To the extent a response is required, Defendants deny any characterization inconsistent with
21 the referenced provisions. The allegations in Sentences 2 and 3, including the footnote, consist of
22 conclusions of law to which no response is required. To the extent a response is required, the allegations
23 are denied.

24
25 158. The allegations in this paragraph, including its footnote, consist of conclusions of law to
26 which no response is required. To the extent a response is required, the allegations are denied.

27 **3. The OCC Failed To Abide by Substantive and Procedural Requirements
Governing Preemption**

1 159. Sentence 1 of this paragraph is denied. The allegations in sentence 2, including its
2 footnote, consist of a characterization and quotations from a Senate Report from 2010, to which
3 Defendants respectfully refer this Court for a complete and accurate statement of its contents. To the
4 extent a response is required, Defendants deny any characterization inconsistent with the referenced
5 document.

6
7 160. The allegation in this paragraph that the OCC had a role in “enabling predatory
8 consumer-lending practices” is denied. The remainder of this paragraph, including its footnote, consists
9 of Plaintiffs characterization of 12 U.S.C. §§25b and 1465 and not allegations of fact to which a
10 response is required. To the extent a response is required, Defendants deny any characterization
11 inconsistent with those statutory provisions.

12
13 161. The allegations in this paragraph, including its footnote, consist of conclusions of law to
14 which no response is required. To the extent a response is required, the allegations are denied.

15 162. The allegations in this paragraph are Plaintiffs’ characterization of 12 U.S.C. §25b and
16 not an allegation of fact for which a response is required. To the extent a response is required,
17 Defendants deny any characterization inconsistent with those statutory provisions.

18 163. The allegations in this paragraph consist of conclusions of law to which no response is
19 required. To the extent a response is required, the allegations are denied.

20 164. The allegations in this paragraph, including its subparts and footnotes, consist of
21 conclusions of law to which no response is required. To the extent a response is required, the allegations
22 are denied.

23
24 165. The allegations in this paragraph, including its footnote, consist of conclusions of law to
25 which no response is required. To the extent a response is required, the allegations are denied, except to
26 admit that 12 U.S.C. § 25b is not applicable to the OCC Final Rule.

27 166. The allegations in this paragraph, including its footnote, consist of Plaintiffs’
28

1 characterization of a comment submitted as part of the rulemaking process and not an allegation of fact
2 for which a response is required. Defendants respectfully refer this Court to the referenced document,
3 which is part of the administrative record, for a true and accurate statement of its contents. To the extent
4 a response is required, Defendants deny any characterization inconsistent with the referenced document.

5
6 167. The allegations in this paragraph, including its footnote, are Plaintiffs' characterization of
7 the OCC's Final Rule, and not an allegation of fact for which a response is required. To the extent a
8 response is required, Defendants deny any characterization inconsistent with the OCC Final Rule..

9
10 168. The allegations in this paragraph, including its footnotes, are Plaintiffs' characterization
11 of the OCC's Final Rule, and not an allegation of fact for which a response is required. To the extent a
12 response is required, Defendants deny any characterization inconsistent with the OCC Final Rule and
13 aver that 12 U.S.C. § 25b is not applicable to the OCC Final Rule.

14
15 169. The allegations in this paragraph, including its footnotes, consist of conclusions of law to
16 which no response is required. To the extent a response is required, the allegations are denied, except to
17 aver that 12 U.S.C. § 25b is not applicable to the OCC Final Rule.

18
19 170. The allegations in this paragraph, including its footnote, consist of conclusions of law to
20 which no response is required. To the extent a response is required, the allegations are denied, except to
21 aver that 12 U.S.C. § 25b is not applicable to the OCC Final Rule.

22
23 171. The allegations in this paragraph, including its footnotes, consist of conclusions of law to
24 which no response is required. To the extent a response is required, the allegations are denied, except to
25 aver that 12 U.S.C. § 25b is not applicable to the OCC Final Rule.

26
27 172. The allegations in this paragraph, including its footnote, are Plaintiffs' characterization
28 of, and quotation from, a rulemaking by the FDIC, and not an allegation of fact for which a response is
required. To the extent a response is required, Defendants deny any characterization inconsistent with
the FDIC's rulemaking.

1 173. The allegations in this paragraph, including its footnotes, consist of conclusions of law to
2 which no response is required. To the extent a response is required, the allegations are denied, except to
3 aver that 12 U.S.C. § 25b is not applicable to the OCC Final Rule.

4 **D. The OCC Lacks Authority To Issue the Rule and Overturn *Madden***

5 174. The allegations in this paragraph, including its footnote, consist of Plaintiffs'
6 characterization of 12 U.S.C. §93a and the OCC's Final Rule are not allegations of fact for which a
7 response is required. To the extent a response is required, Defendants deny any characterization
8 inconsistent with the statute and the OCC's Final Rule.

10 175. The allegations in this paragraph, including its footnotes, consist of conclusions of law to
11 which no response is required. To the extent a response is required, the allegations are denied.

12 176. The allegations in this paragraph, including its footnotes, consist of conclusions of law to
13 which no response is required. To the extent a response is required, the allegations are denied.

15 **E. The OCC's Non-bank Interest Rule Conflicts with Its Own Longstanding
16 Interpretation of Federal Law**

17 177. The allegations in this paragraph are denied.

18 178. The allegation in this paragraph, including its footnote, is a quotation from a speech given
19 by former Comptroller of the Currency John D. Hawke, Jr., to which Defendants respectfully refer this
20 Court for a complete and accurate statement of its contents. To the extent a response is required,
21 Defendants deny any characterization inconsistent with the referenced document.

22 179. The allegations in this paragraph, including its footnote, are characterizations of, and
23 quotations from, a speech given by former Comptroller of the Currency John D. Hawke, Jr., to which
24 Defendants respectfully refer this Court for a complete and accurate statement of its contents. To the
25 extent a response is required, Defendants deny any characterization inconsistent with the referenced
26 document.

28 180. The allegations in this paragraph, including its footnote, are characterizations of, and

1 quotations from OCC Bulletin 2001-47, to which Defendants respectfully refer this Court for a complete
2 and accurate statement of its contents. To the extent a response is required, Defendants deny any
3 characterization inconsistent with the referenced document.

4 181. The allegation in Sentence 1 of this paragraph, including its footnote, is a quotation from
5 OCC Bulletin 2018-14, to which Defendants respectfully refer this Court for a complete and accurate
6 statement of its contents. To the extent a response is required, Defendants deny any characterization
7 inconsistent with the referenced document. The allegations in Sentence 2 of this paragraph, including its
8 footnote, are denied, except to admit that OCC Bulletin 2020-54 dated May 20, 2020 did rescind OCC
9 Bulletin 2018-14.
10

11 182. The allegations in this paragraph are denied.

12 183. The allegations in Sentences 1 and 2 of this paragraph are denied. The allegations in
13 Sentence 3 of this paragraph, including its footnote, consist of conclusions of law to which no response
14 is required. To the extent a response is required, the allegations are denied.
15

16 **F. The OCC Failed To Consider the Rule’s Facilitation of Predatory “Rent-a-Bank”**
17 **Schemes and Other Important Aspects of the “Problem”**

18 **1. The OCC’s Rule Ignores the Problem of “Rent-a-Bank” Schemes**

19 184. The allegations in this paragraph, including its footnote, consist of conclusions of law to
20 which no response is required. To the extent a response is required, the allegations are denied.

21 185. The allegations in this paragraph are denied.

22 186. The allegations in Sentences 1 and 2 of this paragraph are denied. The allegations in
23 Sentence 3 of this paragraph consist of conclusions of law to which no response is required. To the
24 extent a response is required, the allegations are denied.
25

26 187. Defendants lack knowledge or information sufficient to form a belief about the truth of
27 the allegations in this paragraph. To the extent a response is required, the allegations are denied.

28 188. This paragraph, including subparts and footnotes, consists of Plaintiffs’ characterizations

1 of, and quotes from, four different comment letters submitted as part of the rulemaking process, and not
2 allegations of fact for which a response is required. Defendants respectfully refer this Court to those
3 documents, which are part of the administrative record, for a true and accurate statement of their
4 contents. To the extent a response is required, Defendants deny any characterization inconsistent with
5 the referenced documents.
6

7 **2. The Rule Fails To Address the Applicability of the True-Lender Doctrine and**
8 **Ignores Evidence That It Would Give Rise to a Regulatory Vacuum in the Lending**
9 **Market**

10 189. The allegations Sentence 1 of this paragraph are denied. The allegations in Sentences 2
11 and 3 of this paragraph consist of conclusions of law to which no response is required. To the extent a
12 response is deemed required, the allegations are denied.

13 190. The allegation in this paragraph, including its footnote, consists of Plaintiffs'
14 characterization of the OCC's Final Rule and a comment submitted as part of the rulemaking, and not an
15 allegation of fact for which a response is required. Defendants respectfully refer this Court to that
16 comment, which is part of the administrative record, for a true and accurate statement of its contents To
17 the extent a response is required, Defendants deny any characterization inconsistent with the OCC Final
18 Rule and the referenced comment.

19 191. The allegations in Sentences 1 and 2 of this paragraph, including the footnotes, consist of
20 Plaintiffs' characterizations of the OCC's Final Rule, and not allegations of fact for which a response is
21 required. To the extent a response is deemed required, Defendants deny any characterization
22 inconsistent with the OCC Final Rule. The allegations in Sentence 3 of this paragraph consist of
23 conclusions of law to which no response is required. To the extent a response is required, the allegations
24 are denied.
25

26 192. The allegations in this paragraph, including its footnote, consist of conclusions of law to
27 which no response is required. To the extent a response is required, the allegations are denied.
28

1 193. The allegations in this paragraph are denied.

2 194. The allegations in this paragraph are denied.

3 195. The allegations in this paragraph, including its footnote, consist of conclusions of law to
4 which no response is required. To the extent a response is required, the allegations are denied.

5 **G. The OCC Has Offered an Explanation for Its Decision That Is Counter to the Evidence**
6 **and Failed To Adduce Evidence Supporting Its Decision, To Examine the Relevant**
7 **Data, and To Explain the Connection Between the Facts Found and the Choice Made**

8 196. The allegation in Sentence 1 of this paragraph, including its footnote, is a quotation from
9 the referenced notice of proposed rulemaking, and not an allegation of fact to which a response is
10 required. Defendants respectfully refer this Court to the referenced document, which is part of the
11 administrative record, for a true and accurate statement of its contents. To the extent a response is
12 required, Defendants deny any characterization inconsistent with the referenced document. The
13 allegations in Sentences 2 and 3 of this paragraph, including its footnotes, consist of Plaintiffs'
14 characterization of the OCC's Final Rule, and not allegations of fact for which a response is required.
15 To the extent a response is required, Defendants deny any characterizations inconsistent with the OCC
16 Final Rule.

17
18 197. The allegations in this paragraph are denied.

19 198. The allegations in this paragraph, including its footnote, are denied.

20 199. The allegations in Sentences 1 and 2 of this paragraph, including the footnotes, consist of
21 Plaintiffs' characterization of, and a quotation from, a comment letter submitted as part of the
22 rulemaking, and not allegations of fact for which a response is required. Defendants respectfully refer
23 this Court to the referenced document, which is part of the administrative record, for a true and accurate
24 statement of its contents. To the extent a response is required, Defendants deny any characterization
25 inconsistent with the referenced document. The allegations in Sentence 3 of this paragraph, including its
26 footnote, consist of conclusions of law to which no response is required. To the extent a response is
27
28

1 required, the allegations are denied.

2 200. The allegations in this paragraph, including the footnote, are Plaintiffs' characterization
3 of the comment referenced in the footnote, and not an allegation of fact for which a response is required.
4 To the extent a response is required, Defendants deny any characterization inconsistent with the cited
5 footnote.

6 201. The allegations in this paragraph are Plaintiffs' characterization of the OCC Final Rule
7 and not an allegation of fact for which a response is required. To the extent a response is required,
8 Defendants deny any characterization inconsistent with the OCC Final Rule.
9

10 202. The allegations in this paragraph consist of Plaintiff's characterization of, and quotation
11 from, a comment letter submitted as part of the rulemaking, and not allegations of fact for which a
12 response is required. Defendants respectfully refer this Court to that document, which is part of the
13 administrative record, for a true and accurate statement of its contents. To the extent a response is
14 required, Defendants deny any characterization inconsistent with the referenced document.
15

16 203. The allegations in this paragraph, including its footnotes, consist of Plaintiffs'
17 characterization of the OCC's Final Rule and studies submitted as part of the rulemaking process, and
18 not an allegation of fact for which a response is required. To the extent a response is required,
19 Defendants deny any characterization inconsistent with the OCC Final Rule and referenced studies.
20

21 204. The allegations in this paragraph, including its footnotes, consist of Plaintiffs'
22 characterization of the OCC's Final Rule and studies submitted as part of the rulemaking process, and
23 not an allegation of fact for which a response is required. To the extent a response is required,
24 Defendants deny any characterization inconsistent with the OCC Final Rule and referenced studies.

25 205. The allegations in this paragraph, including its footnotes, consist of conclusions of law to
26 which no response is required. To the extent a response is required, the allegations are denied.

27 206. The allegations this paragraph, including its footnotes, consist of conclusions of law to
28

1 which no response is required. To the extent a response is required, the allegations are denied, except to
2 aver that 12 U.S.C. §25b is not applicable to the OCC Final Rule.

3 207. The allegations in this paragraph, including its footnotes, consist of conclusions of law to
4 which no response is required. To the extent a response is required, the allegations are denied.

5 **H. The OCC's Non-bank Interest Rule Is Not Entitled to Deference**

6 208. The allegations in this paragraph, including its footnotes, consist of conclusions of law to
7 which no response is required. To the extent a response is required, the allegations are denied.

8 209. The allegations in this paragraph, including its footnote, consist of Plaintiffs' conclusions
9 of law and not an allegation of fact for which a response is required. To the extent a response is
10 required, Defendants deny any characterization inconsistent with those statutory provisions and aver that
11 12 U.S.C. § 25b is not applicable to the OCC Final Rule.

12 210. The allegations in this paragraph, including its footnote, consist of conclusions of law to
13 which no response is required. To the extent a response is required, the allegations are denied, except to
14 aver that 12 U.S.C. § 25b is not applicable to the OCC Final Rule.

15 211. The allegations in this paragraph, including its footnote, consist of conclusions of law to
16 which no response is required. To the extent a response is required, the allegations are denied.

17 **CLAIM 1**

18 **AGENCY ACTION THAT IS ARBITRARY, CAPRICIOUS, AN ABUSE OF**
19 **DISCRETION, AND OTHERWISE NOT IN ACCORDANCE WITH LAW**

20 212. Defendants incorporate by reference its answers to the foregoing paragraphs 1 through
21 211 of the Complaint as if set forth in full.

22 213. The allegations in this paragraph, including its footnotes, consist of conclusions of law to
23 which no response is required. To the extent a response is required, the allegations are denied.

24 214. The allegations in this paragraph, including its subparts, consist of conclusions of law to
25
26
27
28

1 which no response is required. To the extent a response is required, the allegations are denied.

2 215. The allegations in this paragraph consist of conclusions of law to which no response is
3 required. To the extent a response is required, the allegations are denied.

4 **CLAIM 2**

5 **AGENCY ACTION IN EXCESS OF STATUTORY JURISDICTION, AUTHORITY, OR**
6 **LIMITATIONS, OR SHORT OF STATUTORY RIGHT**

7
8 216. Defendants incorporate by reference its answers to the foregoing paragraphs 1 through
9 215 of the Complaint as if set forth in full.

10 217. The allegations in this paragraph, including its footnote, consist of conclusions of law to
11 which no response is required. To the extent a response is required, the allegations are denied.

12 218. The allegations in this paragraph, including its subparts, consist of conclusions of law to
13 which no response is required. To the extent a response is required, the allegations are denied.

14
15 219. The allegations in this paragraph consist of conclusions of law to which no response is
16 required. To the extent a response is required, the allegations are denied.

17 **CLAIM 3**

18 **AGENCY ACTION TAKEN WITHOUT OBSERVANCE OF PROCEDURE REQUIRED**
19 **BY LAW**

20 220. Defendants incorporate by reference its answers to the foregoing paragraphs 1 through
21 219 of the Complaint as if set forth in full.

22
23 221. The allegations in this paragraph, including its footnote, consist of conclusions of law to
24 which no response is required. To the extent a response is required, the allegations are denied.

25 222. The allegations in this paragraph consist of conclusions of law to which no response is
26 required. To the extent a response is required, the allegations are denied and aver that 12 U.S.C. § 25b
27 is not applicable to the OCC Final Rule.
28

