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UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION

STATE OF OREGON; STATE OF NEW
YORK; STATE OF CALIFORNIA; STATE
OF CONNECTICUT; STATE OF MAINE;
STATE OF MARYLAND;
COMMONWEALTH OF
MASSACHUSETTS; STATE OF
MINNESOTA; STATE OF RHODE
ISLAND; STATE OF VERMONT,

Plaintiffs,

v.

OFFICE OF THE COMPTROLLER OF THE
CURRENCY and JONATHAN V. GOULD,
in his official capacity as Comptroller of the
Currency,

Defendants.

Case No.: 3:26-cv-1672-SI

DEFENDANTS' MOTION TO DISMISS
OR, IN THE ALTERNATIVE, TO
TRANSFER

Pursuant to Local Civil Rule 7-1(a), Defendants certify that the parties have made a good faith effort through video conference to resolve the dispute and have been unable to do so.

Defendants the Office of the Comptroller of the Currency and Jonathan V. Gould, in his official capacity as Comptroller of the Currency, respectfully move to dismiss Plaintiffs' Complaint in its entirety pursuant to Federal Rules of Civil Procedure 12(b)(1), 12(b)(3), and 12(b)(6). Alternatively, Defendants move to transfer this case to the District of Columbia.

Dated: October 5, 2026

Respectfully submitted,

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MEMORANDUM OF LAW IN SUPPORT
OF DEFENDANTS' MOTION TO DISMISS
OR, IN THE ALTERNATIVE, TO
TRANSFER

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Preemption Determination: State Interest-on-Escrow Laws, 91 Fed. Reg. 29350 (May 19, 2026)	3, 8, 15, 19, 30
Real Estate Lending Escrow Accounts, 91 Fed. Reg. 29340 (May 19, 2026)	4, 5, 7, 8, 15, 19, 30, 31

Pursuant to Federal Rules of Civil Procedure (“Rules”) 12(b)(1), 12(b)(3), and 12(b)(6), Defendants the Office of the Comptroller of the Currency (the “OCC”) and Jonathan V. Gould, in his official capacity as Comptroller of the Currency (the “Comptroller”), respectfully move to dismiss Plaintiffs’ Complaint for lack of subject matter jurisdiction, improper venue, and failure to state a claim upon which relief may be granted. Alternatively, the Court should transfer the case to the District of Columbia under 28 U.S.C. § 1404(a).

INTRODUCTION

The National Bank Act affords national banks the authority to provide, or not provide, interest on amounts deposited in mortgage escrow accounts—just as national banks can offer more favorable or less favorable lending rates or other terms to compete in the mortgage marketplace. The States’ laws seek to cabin this aspect of the business of banking and national banks’ other federally authorized powers, 12 U.S.C. §§ 24 (Seventh), 371, forcing national banks to pay interest on escrow accounts even when those banks believe it is better for their mortgage customers or shareholders to offer other or better incentives. To provide clarity that national banks enjoy the power to set these incentives, the OCC issued a regulation under its congressionally delegated authorities to expressly recognize this longstanding power. The OCC separately issued a determination preempting contrary state law under its applicable authorities. 12 U.S.C. § 25b.

The State of Oregon and nine states not found in this District (collectively, the “States”) seek to undermine these national bank powers through this suit. No State, however, claims any presently recognized injury. Indeed, nowhere do the States allege that any national bank in Oregon is failing to provide interest on escrow accounts required by Oregon law. Nor do they allege that any national bank in any State is failing to do the same. At best, the States claim a hypothetical injury to their sovereignty—due to the OCC’s regulatory actions, some national bank at some point

in time may exercise its authority to provide less interest than required by some State law. That conjecture is not enough to invoke this Court’s jurisdiction.

Moreover, even a cursory glance of the Complaint shows that this case does not belong in this Court. Again, there is no allegation that anyone in Oregon is receiving less interest than Oregon law directs, and none of the OCC’s decisions or decision-making occurred in Oregon. Also, three States—the States of New York, Connecticut, and Vermont (the “Second Circuit States”) appear to have joined this suit—filed across the country and with no allegations that anyone in Oregon has violated (or could violate) their laws—to avoid recent, clear, binding, and unfavorable precedent from the Second Circuit that the National Bank Act preempts their interest-on-escrow laws. *Cantero v. Bank of Am., N.A.*, 175 F.4th 201 (2d Cir. 2026) (“*Cantero II*”). This blatant forum shopping should not stand.

For these reasons, and the others set forth below, the Court should dismiss this case or, alternatively, transfer it to the District of Columbia.

STATUTORY AND REGULATORY BACKGROUND

I. Preemption in the Banking Context

When Congress enacted the National Bank Act over 150 years ago, it “intended to facilitate . . . a ‘national banking system.’” *Marquette Nat’l Bank of Minneapolis v. First of Omaha Serv. Corp.*, 439 U.S. 299, 314-15 (1978) (quoting Cong. Globe, 38th Cong., 1st Sess., 1451 (1864)).¹ In doing so, Congress vested national banks with broad powers, including enumerated deposit-taking and lending powers and “all such incidental powers as shall be necessary to carry on the business of banking.” 12 U.S.C. § 24 (Seventh); *see also* 12 U.S.C. § 371. These federal

¹ For purposes of this motion, references to the National Bank Act generally include 12 U.S.C. § 371, which authorizes national banks to engage in real estate lending, although Section 371 is part of the Federal Reserve Act.

powers are “not normally limited by, but rather ordinarily pre-empt[], contrary state law.” *Barnett Bank of Marion Cnty, N.A. v. Nelson*, 517 U.S. 25, 32 (1996). Specifically, a state law may not “prevent or significantly interfere” with a national bank’s exercise of its federal powers. *Id.* at 33; *see also Cantero v. Bank of Am., N.A.*, 602 U.S. 205 (2024) (“*Cantero I*”); 12 U.S.C. § 25b.

Federal preemption, which derives from the Constitution, is a longstanding feature of the national banking system. U.S. Const. art. VI, cl. 2 (federal law is “the supreme Law of the Land”). It fosters the development of national products and services and multistate markets, which expand access to financial services, encourage competition, facilitate consumer choice, and lead to lower costs. Preemption Determination: State Interest-on-Escrow Laws, 91 Fed. Reg. 29350, 29350 (May 19, 2026) (“Preemption Determination”). The way federal preemption achieves these results is by addressing the uncertainty, inefficiencies, and operational challenges that a national bank would face if subject to a patchwork of different laws from state to state. *See Easton v. Iowa*, 188 U.S. 220, 229 (1903) (observing that federal legislation and regulation “erect[] a system extending throughout the country, and independent, so far as powers conferred are concerned, of state legislation which, if permitted to be applicable, might impose limitations and restrictions as various and as numerous as the States”). Federal preemption does not, however, mean that national banks are subject to lax standards. In lieu of a patchwork of state laws, national banks are subject to extensive regulation and supervision at the federal level.

As part of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank”) enacted in 2010, Congress reaffirmed the importance of preemption to the national banking system by codifying *Barnett Bank*. 12 U.S.C. § 25b. Notably, this codification reaffirmed the preemption standard that the OCC and courts have been applying for decades. *See Cantero I*,

602 U.S. at 214 n.2 (“Dodd-Frank adopted *Barnett Bank*” which was “the governing preemption standard before Dodd-Frank.”).²

II. Real Estate Escrow Accounts

National banks serve as a key pillar to support homeownership in the United States by exercising their federal power to engage in real estate lending. Real Estate Lending Escrow Accounts, 91 Fed. Reg. 29340, 29340 (May 19, 2026) (“Powers Rule”). To safely and soundly manage the risks associated with this lending and conduct the business of banking, national banks use a variety of tools, including escrow accounts. *Id.*

Escrow accounts are vessels into which borrowers deposit funds that are later used to pay certain costs of homeownership—e.g., property taxes and homeowners insurance premiums. *Id.* When these costs come due, the bank uses funds in an escrow account to make the required payments. *Id.* Ultimately, escrow accounts provide myriad benefits to stakeholders in the real estate lending market. *Id.* For the bank, escrow accounts ensure that taxes, insurance premiums, and other essential payments are timely made, protecting the priority of the bank’s lien and the value of the bank’s collateral. *Id.* This benefits not only individual banks but also strengthens the financial system as a whole. *Id.* For the borrower, escrow accounts help with budgeting for these payments and simplifying the process of paying varying amounts to numerous parties at different times. *Id.* State and local governments and communities across the country also benefit as escrow accounts reduce the number of delinquent property tax filings and associated foreclosures. *Id.* at n.3 (citing OCC, Comptroller’s Handbook, “Mortgage Banking,” at 15, 99 (2014); U.S. Gen. Acct.

² While this motion’s discussion of preemption focuses on national banks, it applies with equal force to Federal savings associations. *See* 12 U.S.C. §§ 1464 (providing for Federal savings associations’ real estate lending powers and the OCC’s rulemaking authorities), 1465(a) (“the laws and legal standards applicable to national banks” apply when determining whether federal law preempts state law as to Federal savings associations).

Off., B-114860, Study of the Feasibility of Escrow Accounts on Residential Mortgages Becoming Interest Bearing, at 6 (1973)).

Considering the broad range of benefits, it is no surprise that escrow accounts have been widely used since the 1930s. *Id.* In addition, since the 1970s, these accounts have been subject to robust federal regulation to ensure appropriate consumer protection. This includes limits on the total amount that a bank may collect from a borrower for an escrow account, which provided a national solution to the risks of escrow account abuses. *See* Real Estate Settlement Procedures Act, 12 U.S.C. § 2601 *et seq.*

While national banks typically provide escrow account services without charging a fee to their customers, banks nonetheless incur costs and assume risks in administering these accounts, including building escrow systems, ensuring that payments are made on time and to the appropriate parties, and complying with contractual terms and other legal requirements. Powers Rule, 91 Fed. Reg. at 29340-41. When setting the terms and conditions of its escrow accounts, each bank balances these costs and benefits using various factors—e.g., business strategy, expenses, market demand, competition, and eligibility for certain mortgage insurance programs. *Id.* at 29341. The flexibility to make these individualized business decisions, including whether and under what terms to pay interest on escrowed funds, ensures that national banks can effectively and efficiently set the terms and conditions of their escrow accounts. *Id.* Without this flexibility, national banks may make fewer real estate loans or offset their costs in other ways, such as by charging fees to borrowers for the escrow accounts that currently carry no fee. *Id.* at 29340-44. Such fees, which may represent a proportionally larger financing charge compared to higher-balance mortgages, may ultimately pose a bigger burden for first-time and lower-income borrowers. *Id.* at 29341.

III. State Interest-on-Escrow Laws

Several states, including the plaintiffs here (California, Connecticut, Maine, Maryland, Massachusetts, Minnesota, New York, Oregon, Rhode Island, and Vermont), have laws that seek to deny national banks this flexibility by requiring them to pay interest on funds held in escrow and, in some cases, restricting them from assessing related fees. *See* Cal Civ. Code § 2954.8; Conn. Gen. Stat § 49-2a; Me. Stat. tit. 9-b, § 429; Me. Stat. tit. 33, § 504; Md. Code Ann., Com. Law § 12-109(b)(1); Md. Code Ann., Com. Law § 12-109.2(c); Mass. Gen. Laws ch. 183, § 61; Minn. Stat. § 47.20, subd. 9(a); N.Y. Gen. Oblig. Law § 5-601; Or. Rev. Stat. § 86.245(2); Or. Rev. Stat. § 86.250; 19 R.I. Gen. Laws § 19-9-2; Vt. Stat. Ann. tit. 8, § 10404(b).

Whether these laws are preempted by the National Bank Act has been the subject of ongoing litigation that has divided courts for almost a decade. *See, e.g., Lusnak v. Bank of Am., N.A.*, 883 F.3d 1185, 1197 (9th Cir. 2018) (finding California interest-on-escrow law was not preempted); *Cantero v. Bank of Am., N.A.*, 49 F.4th 121, 134 (2d Cir. 2022) (finding New York interest-on-escrow law was preempted), *vacated and remanded*, 602 U.S. 205 (2024) (“*Cantero I*”). After federal appeals courts reached divergent conclusions, the Supreme Court considered, but did not ultimately decide, the issue in *Cantero I*. 602 U.S. at 220-21 (reaffirming *Barnett Bank* standard, providing additional guidance, and remanding case).

Following *Cantero I*, several circuits again considered this issue. On May 5, 2026, the Second Circuit again found New York’s interest-on-escrow law to be preempted. *Cantero II*, 175 F.4th at 215-16. The First and Ninth Circuits reached the opposite result on the interest-on-escrow laws before them. *Conti v. Citizens Bank, N.A.*, 157 F.4th 10, 28 (1st Cir. 2025) (concluding Rhode Island interest-on-escrow law was not preempted by the National Bank Act); *Kivett v. Flagstar Bank, FSB*, 154 F.4th 640, 649 (9th Cir. 2025) (concluding the court lacked authority to overturn pre-*Cantero I* precedent, preserving the Ninth Circuit’s conclusion that a

California interest-on-escrow law was not preempted), *reh'g denied*, No. 21-15667 (9th Cir. Mar. 26, 2026).

The Supreme Court is currently considering whether to grant certiorari in these matters. Pet. for Cert., *Cantero v. Bank of Am., N.A.*, No. 25-1313 (U.S. May 22, 2026); Pet. for Cert., *Flagstar Bank, N.A. v. Kivett*, No. 25-1350 (U.S. June 1, 2026); Pet. for Reh'g, *Citizens Bank, N.A. v. Conti*, No. 25-1004 (U.S. May 11, 2026).³ In the meantime, national banks were again faced with substantial uncertainty as to state laws directing the payment of interest on funds held in escrow.

IV. OCC Actions

Consistent with its congressionally mandated role as the administrator of the national banking system, 12 U.S.C. § 1, the OCC stepped into this breach. On May 19, 2026, the OCC published the Powers Rule to expressly codify national banks' longstanding federal power to establish and maintain real estate escrow accounts and explain that the terms and conditions of these accounts—including the investment of escrowed funds, fees assessed for the provision of such accounts, or whether and to what extent interest or other compensation is calculated and paid to customers whose funds are placed in the escrow account—are business decisions to be made by each national bank in its discretion. Powers Rule, 91 Fed. Reg. at 29340, 29345. As described in the Powers Rule's Preamble, the OCC took this action for a variety of reasons, including to codify agency precedent on this national bank authority. *See id.* at 29340-41.

On the same day, the OCC published a preemption determination concluding that, if applicable, fourteen state interest-on-escrow laws would prevent or significantly interfere with

³ By orders of October 5, 2026, the Supreme Court has called for the views of the Solicitor General regarding the pending petitions for certiorari in these cases. *See* Order List of Oct. 5, 2026, available at: https://www.supremecourt.gov/orders/courtorders/100526zor_2a34.pdf.

national banks' powers by restricting their flexibility to decide whether and to what extent to pay interest or other compensation on funds placed in escrow accounts or assess fees for such accounts. Preemption Determination, 91 Fed. Reg. at 29354-57. The OCC complied with the requirements of Dodd-Frank, applicable to OCC "preemption determinations" of "state consumer financial laws" including by applying the *Barnett Bank* standard as articulated in *Cantero I* and analyzing the cases cited in *Cantero I*. *Id.* at 29353-57. The OCC further consulted with the Consumer Financial Protection Bureau and determined that the state laws at issue had substantively equivalent terms when making its Preemption Determination. *Id.* at 29352, 29354-57; *see also* 12 U.S.C. § 25b.

Both the Powers Rule and Preemption Determination became effective on June 18, 2026. *See* Powers Rule, 91 Fed. Reg. at 29340; Preemption Determination, 91 Fed. Reg. at 29350.⁴ All of the decision-making regarding these two actions occurred at the OCC's headquarters in Washington, DC. *See* OCC, Office Locations, <https://www.occ.gov/about/who-we-are/locations/index-locations.html>; Powers Rule, 91 Fed. Reg. at 29340; Preemption Determination, 91 Fed. Reg. at 29350.

LEGAL STANDARDS

I. Motions to Dismiss for Lack of Subject Matter Jurisdiction Under Rule 12(b)(1)

A Rule 12(b)(1) motion challenges a court's subject-matter jurisdiction. Fed. R. Civ. P. 12(b)(1). "Federal courts are courts of limited jurisdiction." *Gunn v. Minton*, 568 U.S. 251, 256 (2013) (quoting *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994)). Thus, the Court must presume "that a cause lies outside this limited jurisdiction." *Kokkonen*, 511 U.S.

⁴ These OCC's actions also apply to Federal savings associations. *See* Powers Rule at 29340; Preemption Determination at 29350.

at 377 (citations omitted). And “the burden of establishing the contrary rests upon the party asserting jurisdiction.” *Id.*

A defendant can make a facial or factual challenge to subject matter jurisdiction. *Safe Air for Everyone v. Meyer*, 373 F.3d 1035, 1039 (9th Cir. 2004) (discussing difference in challenges). Here, the OCC makes the former. To survive a facial challenge, plaintiffs must allege sufficient facts to invoke federal jurisdiction. *Id.* While the Court presumes the truth of the allegations in considering a facial attack, the Court must still be able to draw a reasonable inference that every element of subject matter jurisdiction has been satisfied. *See Leite v. Crane Co.*, 749 F.3d 1117, 1121 (9th Cir. 2014) (a court “resolves a facial attack as it would a motion to dismiss under Rule 12(b)(6)”). Critically, plaintiffs “must allege facts, not mere legal conclusions” to meet their jurisdictional burden. *Id.* When a court determines it lacks subject matter jurisdiction, it must dismiss the case. *Rainero v. Archon Corp.*, 844 F.3d 832, 841 (9th Cir. 2016) (affirming dismissal for lack of jurisdiction; citing *Arbaugh v. Y & H Corp.*, 546 U.S. 500, 514 (2006)).

II. Motions to Dismiss for Lack of Venue Under Rule 12(b)(3)

“It is axiomatic that a plaintiff may only bring suit where venue is proper, and a defendant may move to dismiss an action for improper venue pursuant to Federal Rule of Civil Procedure 12(b)(3).” *Dantes v. RFPIO, Inc.*, Civ. A. No. 25-0877-AN, 2026 WL 764403, at *1 (D. Or. Mar. 17, 2026) (granting motion to transfer; citing *Atl. Marine Constr. Co. v. U.S. Dist. Ct. for the W. Dist. of Tex.*, 571 U.S. 49, 55 (2013)). In dismissing for improper venue, the pleadings need not be accepted as true, and facts outside the pleadings may be considered. *Argueta v. Banco Mexicano, S.A.*, 87 F.3d 320, 324 (9th Cir. 1996) (affirming dismissal for lack of venue). Where there are factual disputes, however, reasonable inferences must be made in the non-moving party’s favor absent an evidentiary hearing. *See Murphy v. Schneider Nat’l, Inc.*, 362 F.3d 1133, 1138-40, 1144 (9th Cir. 2004) (resolving standard in Ninth Circuit).

III. Motions to Transfer for Convenience Under 28 U.S.C. § 1404

“Even when venue is proper in one district, a case may be transferred to another district ‘[f]or the convenience of parties and witnesses, [and] in the interest of justice.’” *Dantes*, 2026 WL 764403, at *1 (quoting 28 U.S.C. § 1404(a)). Courts must look to 28 U.S.C. § 1404 when deciding to transfer a matter to another district. Congress designed 28 U.S.C. § 1404(a) to “prevent the waste of time, energy and money and to protect litigants, witnesses and the public against unnecessary inconvenience and expense.” *Van Dusen v. Barrack*, 376 U.S. 612, 616 (1964) (citation modified). Accordingly, district courts have discretion “to adjudicate motions for transfer according to an ‘individualized, case-by-case consideration of convenience and fairness.’” *Stewart Org., Inc. v. Ricoh Corp.*, 487 U.S. 22, 29 (1988) (quoting *Van Dusen*, 376 U.S. at 622).

IV. Motions to Dismiss for Failure to State a Claim Under Rule 12(b)(6)

A Rule 12(b)(6) motion tests whether a complaint has successfully “state[d] a claim upon which relief can be granted.” Fed. R. Civ. P. 12(b)(6). While detailed factual allegations are not necessary to withstand a Rule 12(b)(6) challenge, a plaintiff must nonetheless provide “more than labels and conclusions” or “a formulaic recitation of the elements of a cause of action.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). “To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Twombly*, 550 U.S. at 570).

A claim is facially plausible only when a plaintiff pleads factual content that enables the Court to “draw [a] reasonable inference that the defendant is liable for the misconduct alleged.” *Iqbal*, 556 U.S. at 678. While the Court must assume any “well-pleaded factual allegations” are accurate, conclusory allegations “are not entitled to the assumption of truth.” *Id.* at 679; *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001), (“Nor is the court required to accept as true allegations that are merely conclusory, unwarranted deductions of fact, or unreasonable

inferences.”), *opinion amended on denial of reh’g*, 275 F.3d 1187 (9th Cir. 2001). In other words, plaintiffs’ allegations “may not simply recite the elements of a cause of action, but must contain sufficient allegations of underlying facts to give fair notice and to enable the opposing party to defend itself effectively.” *Eclectic Props. E., LLC v. Marcus & Millichap Co.*, 751 F.3d 990, 996 (9th Cir. 2014) (affirming dismissal of case; quoting *Starr v. Baca*, 652 F.3d 1202, 1216 (9th Cir. 2011)).

Moreover, “[t]he court need not [] credit a plaintiff’s legal conclusions that are couched as factual allegations.” *Beckwith v. O’Donnell*, Civ. A. No. 23-0353-SI, 2024 WL 1075205, at *2 (D. Or. Mar. 12, 2024) (granting motion to dismiss; citing *Iqbal*, 556 U.S. at 678-79). “Where a complaint pleads facts that are merely consistent with a defendant’s liability, it stops short of the line between possibility and plausibility of entitlement to relief” and is insufficient to withstand a Rule 12(b)(6) motion to dismiss. *Iqbal*, 556 U.S. at 679 (citation modified; quoting *Twombly*, 550 U.S. at 557).

“[O]n a motion to dismiss a court may properly look beyond the complaint to matters of public record and doing so does not convert a Rule 12(b)(6) motion to one for summary judgment.” *Gemtel Corp. v. Cmty. Redevelopment Agency of City of L.A.*, 23 F.3d 1542, 1544 n.1 (9th Cir. 1994) (alteration in original; affirming dismissal; quoting *Mack v. S. Bay Beer Distribs., Inc.*, 798 F.2d 1279, 1282 (9th Cir. 1986), *abrogated on other grounds by Astoria Fed. Sav. & Loan Ass’n v. Solimino*, 501 U.S. 104 (1991)); *see also United States v. Corinthian Colls.*, 655 F.3d 984, 999 (9th Cir. 2011) (a court may consider materials that are submitted with and attached to, or referenced, in a complaint in deciding a motion to dismiss).

ARGUMENT

The Court should dismiss or transfer this suit for many reasons. *First*, standing and ripeness bar this lawsuit. The States’ alleged injuries are merely speculative, rendering them

without standing and their case unripe. No State claims that any bank has exercised, or will imminently exercise, its business judgment and national bank powers to make, or not make, interest payments inconsistent with state law. Moreover, the Second Circuit States face traceability and redressability problems due to *Cantero II*, where the Second Circuit ruled that a state interest-on-escrow law was preempted even before the OCC’s recent regulatory actions. As such, those States cannot demonstrate their purported injuries were caused by the OCC’s regulatory actions or can be redressed by this Court.

Second, venue is, at best, questionable in this district and far from convenient. Thus, the Court should transfer this case to the District of Columbia, where the OCC is headquartered and decisions on the rulemakings were made. Indeed, for the Second Circuit States to sue in this jurisdiction, a continent away, unmask this case for what it is—blatant forum shopping.

Third, and lastly, the States fail to state a claim that the OCC exceeded its statutory authority or acted contrary to law in promulgating the Powers Rule. The OCC’s authority to clarify national banking powers is clear, and the States fail to allege that the OCC exceeded or contravened that authority.

I. The Court Lacks Subject Matter Jurisdiction.

The States’ claims fail out of the gate because Plaintiffs lack standing and their claims are not ripe. Standing is a “bedrock constitutional requirement.” *United States v. Texas*, 599 U.S. 670, 675 (2023). It requires that the plaintiffs “possess a personal stake” in the outcome, which “helps ensure that courts decide litigants’ legal rights in specific cases, as Article III requires.” *FDA v. All. for Hippocratic Med.*, 602 U.S. 367, 379 (2024). Standing thus “serves to protect the ‘autonomy’ of those who are most directly affected so that they can decide whether and how to challenge the defendant’s action.” *Id.* at 379-80 (quoting *Valley Forge Christian Coll. v. Ams. United for Separation of Church & State, Inc.*, 454 U.S. 464, 473 (1982)).

“[T]he irreducible constitutional minimum” of standing requires that the plaintiffs have demonstrated that they “(1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision.” *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016) (quoting and citing *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560-61 (1992)). Moreover, these elements must be satisfied “for each claim [a plaintiff] seeks to press and for each form of relief that is sought.” *Town of Chester, N.Y. v. Laroe Estates, Inc.*, 581 U.S. 433, 434 (2017) (quoting *Davis v. FEC*, 554 U.S. 724, 734 (2008)); *see also Ctr. for Biological Diversity v. Bernhardt*, 946 F.3d 553, 560 (9th Cir. 2019) (plaintiff’s alleged injury was speculative, and thus, plaintiff lacked standing). Critically, plaintiffs bear a heightened burden to allege standing when the “asserted injury arises from the government’s allegedly unlawful regulation . . . of *someone else*[.]” *Lujan*, 504 U.S. at 562 (emphasis in original).

Correspondingly, the ripeness doctrine “forbids federal courts to adjudicate disputes that are dependent on contingent future events that may not occur as anticipated, or indeed may not occur at all.” *Trump v. California*, 609 U.S. ---, 2026 WL 2473573, at *2 (Aug. 24, 2026) (citation modified; challenge to Executive Order regarding election integrity was not ripe; citing *Trump v. New York*, 592 U.S. 125, 131 (2020) (challenge to government action was not ripe; “At present, this case is riddled with contingencies and speculation that impede judicial review.”)). Indeed, the ripeness doctrine “prevent[s] courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements[.]” *Abbott Lab’ys v. Gardner*, 387 U.S. 136, 148-49 (1967), *abrogated on other grounds by Califano v. Sanders*, 430 U.S. 99, 105 (1977).

Here, the States fail to sufficiently allege standing and ripeness. Thus, the Court should dismiss the Complaint.

A. The States Fail to Demonstrate Any Injury-in-Fact or Ripeness Based on Sovereign Interest.

To start, the States fail to demonstrate an injury-in-fact sufficient to confer standing or ripeness based on any harm to their sovereign interest. Indeed, any such harm is speculative.

To establish injury-in-fact, the States must allege injuries that are concrete and particularized; “[c]onjectural, hypothetical, or speculative injuries, such as ‘[a]llegations of possible future injury,’ do not suffice.” *Bernhardt*, 946 F.3d at 560 (quoting *Whitmore v. Arkansas*, 495 U.S. 149, 158 (1990)). The injury requirement for standing “bears close affinity to questions of ripeness—whether the harm asserted has matured sufficiently to warrant judicial intervention.” *Warth v. Seldin*, 422 U.S. 490, 499 n.10 (1975); *Twitter, Inc. v. Paxton*, 56 F.4th 1170, 1173 (9th Cir. 2022) (“[T]he constitutional component of ripeness is synonymous with the injury-in-fact prong of the standing inquiry.” (citation omitted)).

The States challenge the Powers Rule and Preemption Determination due to their preemptive effects on the States’ interest-on-escrow laws. *See* Compl. ¶¶ 1-18. But the States’ Complaint is devoid of sufficient alleged facts to support their alleged standing. All the States allege is that they have “a sovereign interest in enforcing their interest-on-escrow laws” and because the Powers Rule and Preemption Determination “purport to preempt Plaintiffs’ statutes, Plaintiffs have standing to challenge them.” *Id.* ¶ 93 (citing cases). That is exactly the sort of “mere legal conclusion[]” that the Ninth Circuit has explicitly rejected for purposes of deciding jurisdiction. *Leite*, 749 F.3d at 1121. Stripped of its bare legal conclusions, the Complaint is devoid of any allegation that the States have experienced any concrete and particularized, and actual or imminent harm because of the Powers Rule or Preemption Determination.

As an initial matter, the States incorrectly conflate and collapse two distinct actions—the Powers Rule and the Preemption Determination—into one. Plaintiffs assert that the Powers Rule

and Preemption Determination together “purport to preempt Plaintiffs’ statutes,” Compl. ¶ 93, without explaining how the Powers Rule, which merely codifies certain national bank powers, *see* Powers Rule, 91 Fed. Reg. at 29340, 29345, does any such thing. Consequently, the States make no attempt to allege what concrete injury they have allegedly suffered from the Powers Rule alone.

As to the Preemption Determination, while the States may be dissatisfied with its conclusion that the States’ laws are preempted, the States fail to allege that any national bank is managing escrow accounts inconsistent with their laws due to the determination. The Preemption Determination was in effect for at least two months before the States brought this suit. Preemption Determination, 91 Fed. Reg. at 29350. Yet, the Complaint is conspicuously devoid of any allegation that any national bank has not paid, or imminently intends not to pay, interest on funds in escrow prescribed by the States’ laws due to the Preemption Determination or the Powers Rule.

Nor can Plaintiffs demonstrate any substantial risk of a future or imminent harm. The Powers Rule clarifies that national banks have “flexibility in making business judgments as to the terms and conditions of [escrow] accounts,” including to decide whether and to what extent to pay interest on funds held in escrow. Powers Rule, 91 Fed. Reg. at 29340. The Preemption Determination clarifies that state interest-on-escrow laws are preempted. Preemption Determination, 91 Fed. Reg. at 29350. Neither the Powers Rule nor Preemption Determination prohibits national banks from deciding to pay their customers the interest-on-escrow required by state law when exercising their business judgment. Powers Rule, 91 Fed. Reg. at 29340; Preemption Determination, 91 Fed. Reg. at 29350.

Without these kinds of allegations, the States merely speculate that, at some point, a series of hypothetical events may line up in such a way that the Powers Rule and Preemption Determination might affect their ability to enforce their interest-on-escrow laws. This speculation

about possible future harm, untethered to present events, fails to satisfy the States’ burden to demonstrate an injury-in-fact that is ripe for adjudication. *See Clapper v. Amnesty Int’l USA*, 568 U.S. 398, 414-15 & n.5 (2013) (standing was lacking where alleged injury arose from a “speculative chain of possibilities”); *Summers v. Earth Island Inst.*, 555 U.S. 488, 496 (2009) (finding no standing based on speculation about future developments).

Notably, the Supreme Court recently reiterated that this form of conjecture is insufficient to invoke a court’s jurisdiction. In *Trump*, 2026 WL 2473573, at *2-4, the Supreme Court determined that subject matter jurisdiction was lacking over various states’ attempts to challenge the President’s Executive Order on federal elections. *Id.* The Supreme Court determined that the states had failed to establish either standing or ripeness because their challenge to the Executive Order’s provisions relied on “stacking hypothetical on hypothetical to speculate that harm will eventually materialize” or a mere “string of speculations.” *Id.* at *2, *4. Likewise here, the Complaint does not plausibly allege how and whether the States have been (or will be) unable to enforce their interest-on-escrow laws or why any such future risk is imminent.

B. The States Fail to Demonstrate Any Injury-in-Fact Based on Any Economic Harm to Their Citizens.

Notably, the States cannot salvage their suit by relying on alleged harm to their citizens. It is axiomatic that “states do not have standing to sue the federal government in a third-party *parens patriae* capacity based on alleged injuries ‘to an identifiable group of individual residents.’” *Washington v. FDA*, 108 F.4th 1163, 1177-78 (9th Cir. 2024) (state lacked standing to challenge federal regulation; quoting *Alfred L. Snapp & Son, Inc. v. Puerto Rico ex rel. Barez*, 458 U.S. 592, 607 (1982)). “This is because, with respect to the relationship between citizens and federal action, the federal government, not the states, is the sovereign entity that acts as the ultimate ‘parent of the country.’” *Id.* (quoting *Snapp*, 458 U.S. at 600).

Here, the States allege that “State interest-on-escrow laws result in borrowers recouping thousands of dollars in interest payments every year.” Compl. ¶ 93. They then summarily conclude they “have a sovereign interest in . . . ensuring their residents continue receiving interest payments.” *Id.* These allegations squarely fall within a prohibited *parens patriae* theory of standing. *See Washington*, 108 F.4th at 1177-78 (finding state’s theory of harm based on federal regulations’ effects on pregnant women was improper *parens patriae* standing in suit against federal government); *Alaska v. Nat’l Parks & Conservation Ass’n, Inc.*, 981 F.2d 1259 (9th Cir. 1992) (finding state’s theory of harm based on effect of federal regulations on Alaskan land enjoyed by its citizens was improper *parens patriae* standing in suit against federal government); *Nevada v. Burford*, 918 F.2d 854, 858 (9th Cir. 1990) (finding state’s challenge of federal agency’s grant of right-of-way in mountain located in state in order to “advance the interests of its citizens” was improper *parens patriae* standing in suit against federal government).

C. The Second Circuit States Cannot Establish Traceability or Redressability.

Additionally, three of the States, New York, Connecticut, and Vermont (the “Second Circuit States”), cannot establish traceability or redressability to support their standing, given *Cantero II*’s binding conclusion that the National Bank Act preempts state interest-on-escrow laws independent of the OCC’s Powers Rule or Preemption Determination. Even if any harm to these states’ sovereign interest or their citizens’ pockets had been adequately alleged, such harm could not be fairly traced to either of the OCC’s Powers Rule or Preemption Determination, as opposed to the pre-existing legal framework, particularly the National Bank Act. Nor could the Court redress any such harm in the Second Circuit States by granting them the requested relief.

Traceability and redressability are “flip sides of the same coin,” *Hippocratic Med.*, 602 U.S. at 380-81 (quoting *Sprint Commc’ns Co. v. APCC Servs., Inc.*, 554 U.S. 269, 288 (2008)). Both are “two facets of a single causation requirement.” *Wash. Env’t Council v. Bellon*, 732 F.3d

1131, 1146 (9th Cir. 2013) (alleged casual nexus was too attenuated to support standing; quoting *Allen v. Wright*, 468 U.S. 737, 753 n.19 (1984), *abrogated on other grounds by Lexmark Int’l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118 (2014)). The concepts are, however, distinct in that traceability or causality “examines the connection between the alleged misconduct and injury, whereas redressability analyzes the connection between the alleged injury and requested judicial relief.” *Wash. Env’t Council*, 732 F.3d at 1146.

For the States to meet their burden to demonstrate traceability, “there must be a causal connection between the injury and the conduct complained of—the injury has to be fairly traceable to the challenged action of the defendant, and not the result of the independent action of some third party not before the court.” *Lujan*, 504 U.S. at 560 (citation modified). “To plausibly allege that the injury was not the result of the independent action of some third party, [a plaintiff] must offer facts showing that the government’s unlawful conduct is at least a substantial factor motivating the third parties’ actions.” *Mendia v. Garcia*, 768 F.3d 1009, 1013 (9th Cir. 2014) (citation modified; discussing standard). Thus, “it is ordinarily ‘substantially more difficult’ to establish” standing in these circumstances. *Lujan*, 504 U.S. at 562 (quoting *Allen*, 468 U.S. at 758).

Here, the Second Circuit States fail to meet that difficult burden. As the Second Circuit States themselves allege, the Second Circuit has “held that the National Bank Act preempts New York’s law.” Compl. ¶ 70 n.1; *see Cantero II*, 175 F.4th at 215-16 (reaffirming its conclusion that the National Bank Act preempts state interest-on-escrow laws after remand by the Supreme Court). The Second Circuit States conveniently sideline information about *Cantero II* to a footnote, *see* Compl. ¶ 70 n.1, but *Cantero II* provides critical context that defeats those States’ standing. *Cantero II* was not based on the OCC’s Powers Rule or Preemption Determination. *See* 175 F.4th at 208, 212-16 (referencing the OCC’s proposed actions and performing an independent

preemption analysis under the National Bank Act). Indeed, the decision was made on May 5, 2026, two weeks before the OCC’s publication of either the final Powers Rule or Preemption Determination and almost two months before both took effect. *See* Powers Rule, 91 Fed. Reg. at 29340; Preemption Determination, 91 Fed. Reg. at 29350. As a result, this Second Circuit law pre-dates, and is independent of, the OCC’s challenged conduct, meaning that these states’ interest-on-escrow laws are preempted regardless of the Powers Rule and Preemption Determination. In other words, even if the Second Circuit States could allege any harm based on a national bank’s decision not to pay interest on escrow in accordance with their states’ laws, they cannot show that the OCC’s actions—as opposed the Second Circuit’s holding in *Cantero II*—were a substantial factor motivating this decision.

For many of these same reasons, the Second Circuit States run headlong into redressability problems. Redressability requires showing that it is “likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision.” *Lujan*, 504 U.S. at 561 (quotations omitted). It is the plaintiff’s burden to “show a predictable chain of events that would likely result from judicial relief and redress the plaintiff’s injury.” *Diamond Alt. Energy, LLC v. EPA*, 606 U.S. 100, 121 (2025) (quotations omitted); *see also G.B. ex rel. G.P. v. EPA*, 172 F.4th 1042, 1063-64 (9th Cir. 2026) (“Relief that does not remedy the injury suffered cannot bootstrap a plaintiff into federal court; that is the very essence of the redressability requirement.” (quoting *Steel Co. v. Citizens for a Better Env’t*, 523 U.S. 83, 107 (1998))). “Where an essential element of standing depends on the reaction of a third party to the requested government action or inaction, it becomes the burden of the plaintiff to adduce facts showing that those choices have been or will be made.” *Ctr. for Biological Diversity v. Exp.-Imp. Bank of the U.S.*, 894 F.3d 1005, 1012 (9th Cir. 2018) (citation modified; plaintiffs failed to show redressability). “This is not a requirement for heightened

scrutiny in such situations but an observation of what facts are logically necessary to allege . . . that a favorable federal court ruling will ameliorate the claimed injury, making the dispute one that is ‘appropriately resolved through the judicial process.’” *Id.* (quoting *Lujan*, 504 U.S. at 560).

Here, the Second Circuit States ask the Court to declare the Powers Rule and Preemption Determination unlawful and vacate and set them aside. *See* Compl., Prayer for Relief. But such relief would not allow the Second Circuit States to enforce their interest-on-escrow laws or ensure their citizens in every instance receive state-mandated interest on their funds held in escrow accounts. Even were the Court to grant that relief to the Second Circuit States, *Cantero II* is binding Second Circuit precedent. Thus, the Second Circuit States would still suffer their purported injuries irrespective of the outcome in this case. For any relief from this Court to truly redress the Second Circuit States’ purported injuries, the Second Circuit States would need *Cantero II* to cease being binding precedent on them. Obviously, this Court cannot provide that relief. *See, e.g., Cherry v. McDonough*, Civ. A. No. 07-0445, 2008 WL 482739, at *4 (N.D. Fla. Feb. 18, 2008) (“This court has no authority to review decisions of another district court, or of the Eleventh Circuit, which reviews judgments of this and other district courts.”).

Accordingly, the Second Circuit States cannot establish traceability or redressability.

II. The Court Should Transfer to the District of Columbia.

This case also presents a serious question about whether venue is proper in Oregon for all States, and in any event, venue is more convenient in the District of Columbia.

A. Besides Oregon, It Is Highly Questionable Whether Venue Is Proper for Any Other States’ Claims Under the Plain Text of the Applicable Venue Statute.

Under 28 U.S.C. § 1391(e)(1), a plaintiff may only bring a civil action against the United States “in any judicial district in which (A) a defendant in the action resides, (B) a substantial part of the events or omissions giving rise to the claim occurred . . . , or (C) the plaintiff resides[.]” *Id.*

Section 1391(e)(1) also states that “additional persons may be joined as parties . . . in accordance with the Federal Rules of Civil Procedure and with such other venue requirements as would be applicable if the United States . . . were not a party.” *Id.* And general venue is appropriate in (1) a district “in which any defendant resides, if all defendants are residents of the State in which the district is located” (2) a district where “a substantial part of the events or omissions giving rise to the claim occurred,” or (3) when neither of those applies, “any judicial district in which any defendant is subject to the court’s personal jurisdiction.” 28 U.S.C. § 1391(b).

Under a plain reading of these provisions, while venue may be proper as to Oregon, it is not proper as to the other nine states. Other than Oregon itself, neither the Defendants nor the Plaintiffs reside in Oregon. In addition, none of the decision-making for the Powers Rule or Preemption Determination, i.e., the events giving rise to the claim, occurred in Oregon. Nor would the third provision of section 1391(b) create venue in Oregon given that the District of Columbia where Defendants do reside and where the decision-making for the Powers Rule and Preemption Determination did occur would be a proper venue under section 1391(b).

Admittedly, several courts have reached a different conclusion, but those decisions appear to trace their origins to a 1978 Third Circuit case, *Exxon Corp. v. FTC*, 588 F.2d 895 (3d Cir. 1978). In that case, without grappling with the last sentence of section 1391(e)(1), the court opined as a policy matter that “requiring every plaintiff in an action against the federal government or an agent thereof to independently meet section 1391(e)’s standards would result in an unnecessary multiplicity of litigation.” *Exxon*, 588 F.2d at 898. It then held “that venue is proper for this action because at least one plaintiff did reside in” the state. *Id.* at 899. Since 1978 various courts have applied this holding, without addressing the plain text of section 1391(e)(1) and largely without any discussion at all. *See, e.g., Ry. Lab. Execs.’ Ass’n v. Interstate Com. Comm’n*, 958 F.2d 252,

256 (9th Cir. 1991) (citing *Exxon*; noting “[b]ecause we decide that [the first plaintiff] has standing, we need not decide whether venue is proper in this circuit for [the other]” because the respondents “do not challenge venue for” the first plaintiff; no discussion of the text of 28 U.S.C. § 1391(e)(1)).

Exxon’s policy driven holding cannot stand under the Supreme Court’s modern day interpretative standards. Indeed, the Third Circuit decided *Exxon* during the Supreme Court’s “*ancien regime*” when courts “assumed it to be a proper judicial function to ‘provide such remedies as are necessary to make effective a statute’s purpose[.]’” *Hernandez v. Mesa*, 589 U.S. 93, 99 (2020) (emphasis in original; citation modified; discussing and cabining the holding of *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388 (1971), and its progeny). In modern times, the Supreme Court has directed a different, textualist approach. Now, to resolve a question of statutory interpretation, a court’s “inquiry begins with the statutory text, and ends there as well” when the statute is unambiguous. *Nat’l Ass’n of Mfrs. v. Dep’t of Def.*, 583 U.S. 109, 127 (2018) (quoting *BedRoc Ltd., LLC v. United States*, 541 U.S. 176, 183 (2004)); see also *Bostock v. Clayton Cnty., Ga.*, 590 U.S. 644, 653 (2020) (“When the express terms of a statute give us one answer and extratextual considerations suggest another, it’s no contest. Only the written word is the law, and all persons are entitled to its benefit.”).

Here, the text of section 1391(e)(1) is unambiguous and squarely answers how courts must address the venue of joined parties who cannot themselves satisfy that section’s requirements. Specifically, the statute provides that, while others may be joined, they must satisfy the general venue requirements of section 1391(b)(1). 28 U.S.C. § 1391(e)(1) (“Additional persons may be joined as parties to any such action in accordance . . . with such other venue requirements as would be applicable if the United States or one of its officers, employees, or agencies were not a party.”).

Because the States, besides Oregon, cannot satisfy the general venue requirements of section 1391(b), venue as to their claims is lacking in this district.

B. In Any Event, the Court Should Transfer this Action to the District of Columbia.

Even if venue is technically proper for all plaintiff States, it is clearly inconvenient to consider in Oregon the lawfulness of decision-making that occurred in the District of Columbia. *See generally Pravetz v. Fed. Ret. Thrift Inv. Bd.*, Civ. A. No. 18-1081, 2018 WL 8058843, at *2 (C.D. Cal. Dec. 28, 2018) (“[no] need to decide the issue of [proper] venue” when “the court may transfer th[e] action to a district where it might have been brought”). To transfer a case to another district pursuant to 28 U.S.C. § 1404(a), the Court must first decide whether the action “might have been brought” in a transferee court. *Hatch v. Reliance Ins. Co.*, 758 F.2d 409, 414 (9th Cir. 1985) (affirming case transfer). If the first step is satisfied, the Court must then “weigh the relevant factors and decide whether, on balance, a transfer would serve the convenience of parties and witnesses and otherwise promote the interest of justice.” *Columbia Strategic Couns., Inc. v. Innovative Rail Techs., LLC*, Civ. A. No. 25-0832-AN, 2025 WL 3558773, at *2 (D. Or. Dec. 11, 2025) (quoting *Atl. Marine*, 571 U.S. at 62-63).

Courts typically look to some or all of the following private and public factors at this second step: (1) plaintiff’s choice of forum; (2) the convenience of the witnesses and the ease of access to the evidence; (3) the familiarity of each forum with the applicable law; (4) any local interest in the controversy; (5) the relative court congestion in each forum; and (6) the “overarching consideration of the interest of justice.” *Atl. Marine*, 571 U.S. at 62 & n.6, 63 (describing “[f]actors relating to the parties’ private interests” and “[p]ublic-interest factors” for a court to consider in determining whether to transfer an action); *see also Decker Coal Co. v. Commonwealth Edison Co.*, 805 F.2d 834, 843 (9th Cir. 1986) (“[F]orum non conveniens considerations are helpful in deciding a § 1404

transfer motion.” (citation modified)), *superseded by statute on other grounds by* 28 U.S.C. § 1391.

Here, both steps warrant a transfer to the District of Columbia.

1. The States Could Have Brought this Action in the District of Columbia.

Under 28 U.S.C. § 1404(a), the Court may transfer a case to a “district or division where [the case] might have been brought[.]” Under 28 U.S.C. § 1391(e)(1), venue is proper in a suit against federal agencies in any judicial district in which: “(A) a defendant in the action resides, (B) a substantial part of the events or omissions giving rise to the claim occurred . . . , or (C) the plaintiff resides[.]” *Id.* Thus, the District of Columbia is a proper venue because Defendants reside in Washington, DC and because it is the location of the OCC’s actions—issuance of the Powers Rule and Preemption Determination—that Plaintiffs now challenge. *See, e.g., Indep. Bankers Ass’n of Am. v. Conover*, 594 F. Supp. 635, 639-40 (N.D. Ill. 1984) (transferring action to the District of Columbia where the Comptroller resides and claim arose); *Nat’l Ass’n of Life Underwriters v. Clarke*, 761 F. Supp. 1285, 1293 (W.D. Tex. 1991) (cause of action arose in Washington, DC where the OCC decision-making took place).

2. The Private and Public Interest Factors Weigh in Favor of Transfer.

At the second step, the factors of convenience and fairness weigh in favor of transfer to the District of Columbia.

a. *The States’ Choice of Forum Warrants No Deference.*

While a court “must balance the preference accorded plaintiff’s choice of forum with the burden of litigating in an inconvenient forum,” *Decker Coal*, 805 F.2d at 843, courts need only accord such preference minimal consideration when the operative facts have not occurred within the forum and the forum has no interest in the parties or the subject matter. *See Lou v. Belzberg*, 834 F.2d 730, 739 (9th Cir. 1987) (affirming transfer order). Critically, “courts have found that

where the record discloses forum shopping, not only does it negate the preference accorded the plaintiff's choice of forum, it also weighs in favor of transfer.” *Ward v. Lime Fin. Servs., Ltd*, Civ. A. No. 08-0840-AC, 2009 WL 10692461, at *4 (D. Or. Jan. 15, 2009) (granting motion to transfer); *Wireless Consumers All., Inc. v. T-Mobile USA, Inc.*, Civ. A. No. 03-3711, 2003 WL 22387598, at *5 (N.D. Cal. Oct. 14, 2003) (granting motion to transfer; “In fact, the transfer statute has a built-in mechanism to remedy the evils of forum shopping by giving little or no weight to the plaintiff's choice of forum away from home and without ties to the controversy.”). Here, no deference should be given to the States’ choice of forum.

First, each of the States, other than Oregon, clearly reside outside of Oregon.

Second, the operative facts of this case—the regulatory decision-making process and generation of the administrative record—occurred in the District of Columbia. Rather than identify any particular interest the District of Oregon may have in this action, Plaintiffs instead challenge actions “by [a] federal agenc[y] headquartered in the District of Columbia” where the named Defendants are located. *Alec L. v. Jackson*, Civ. A. No. 11-2203, 2011 WL 8583134, at *3 (N.D. Cal. Dec. 6, 2011) (granting motion to transfer).

Third, Oregon is inconvenient for most parties. The States are located across the country, with more than a majority on the East Coast (New York, Connecticut, Vermont, Rhode Island, Massachusetts, Maine, and Maryland), one in the Midwest (Minnesota), and only two on the West Coast (California and Oregon). In contrast, all Defendants reside in the District of Columbia where the OCC made its decisions for the challenged actions.

Finally, deference to the States’ choice of forum here is particularly unwarranted where the Second Circuit States have engaged in blatant forum shopping. As explained above, there is already clear, binding precedent from the Second Circuit, independent of the Powers Rule and

Preemption Determination, concluding that the National Bank Act preempts state interest-on-escrow laws. As a result, allowing these states to nonetheless bring suit in this district by hiding under Oregon’s venue would allow them to potentially circumvent Second Circuit precedent governing their laws. *See Vivendi SA v. T-Mobile USA Inc.*, 586 F.3d 689, 694 (9th Cir. 2009) (“[T]he choice of forum of Vivendi S.A.’s American co-plaintiff, Vivendi Holding, deserves reduced deference because the district court found that Vivendi had engaged in forum shopping.”); *Ward*, 2009 WL 10692461, at *4 (granting transfer where record showed that “Plaintiffs filed in Oregon, a foreign forum, to avoid the unfavorable law” that another “case created in their home forum of Alabama”). Indeed, this is exactly the kind of forum-shopping that the Ninth Circuit specifically “do[es] not encourage.” *Attwood v. Mendocino Coast Dist. Hosp.*, 886 F.2d 241, 245 (9th Cir. 1989) (“we do not encourage forum-shopping, nor do we view the encouragement of forum-shopping as consistent with the principles of wise judicial administration” (citation modified)).

Thus, Plaintiffs’ chosen forum should not be entitled to deference.

b. The Convenience of the Witnesses and Access to Evidence Weigh in Favor of Transfer.

Although the OCC has no reason to expect that anything other than the administrative record will be necessary for a court’s review in this Administrative Procedure Act (“APA”) case should it reach the merits, the factors of convenience of potential witnesses and access to any possible evidence nevertheless weigh in favor of transfer to the District of Columbia where any potential witnesses or possible evidence would be located. *See, e.g., Pac. Nw. Reg’l Council of Carpenters v. Laborers Int’l Union of N. Am.*, Civ. A. No. 09-0420, 2009 WL 1588654, at *4 (W.D. Wash. June 5, 2009) (in an administrative record case, “[t]o the extent that any evidentiary discovery must be conducted in this case, the location of such evidence is in the District of

Columbia”); *Blixseth v. FBI*, Civ. A. No. 21-0067, 2021 WL 1991258, at *2 (D. Nev. May 18, 2021) (location of “any potential agency witnesses” made the “District of Columbia, for purposes of convenience, . . . the better venue”).

c. Familiarity with the Applicable Law Does Not Weigh Against Transfer.

Because both this Court and the District of Columbia are “equally capable of applying federal law,” the factor of familiarity with applicable law is neutral. *Hong v. Recreational Equip., Inc.*, Civ. A. No. 19-0951, 2019 WL 5536406, at *4 (W.D. Wash. Oct. 25, 2019) (transferring case). To the extent National Bank Act preemption analysis requires some reference to Oregon’s law concerning interest payments on escrow accounts, the case equally involves reference to the laws of nine other States. Thus, there is no unique concern with Oregon law.

At any rate, even in the presence of a related state law issue, “[w]here the principal gravamen of all the cases lies in federal [] law rather than local law, [this] factor deserves no significant consideration.” *Blake Constr. Co. Inc. v. Int’l Harvester Co.*, 521 F. Supp. 1268, 1273 (N.D. Ill. 1981) (discussing the significance of a pendant state law claim in one case in considering the transfer of five related class actions); *see also Hoefer v. Dep’t of Com.*, Civ. A. No. 00-0918, 2000 WL 890862, at *3 (N.D. Cal. June 28, 2000) (relevance of California law to case did not prevent transfer). And indeed, it is unclear how the Second Circuit States could relitigate binding Second Circuit precedent concerning federal preemption of laws of the States in the Second Circuit in this Court. *See generally Wireless Consumers*, 2003 WL 22387598, at *6 (granting transfer because forum shopping plaintiff filed suit as a “reinstitution of a case to avoid a particular judge or precedent”). Thus, in this matter raising substantive issues of federal preemption, any related state law issues do not weigh against transfer.

d. The Local Interest in the Controversy Is in the District of Columbia, Weighing Heavily in Favor of Transfer.

When assessing where the local interest in the controversy lies in a case challenging an administrative action by a federal agency, courts assess where the claims arose and look to the location of the administrative decision-making. *See Nat'l Ass'n of Home Builders v. Env't Prot. Agency*, 675 F. Supp. 2d 173, 179 (D.D.C. 2009) (denying motion to transfer when decision-making took place in Washington, DC and no decision-making had occurred in requested transferee district); *Chesapeake Climate Action Network v. Exp.-Imp. Bank of the U.S.*, Civ. A. No. 13-3532, 2013 WL 6057824, at *3 (N.D. Cal. Nov. 15, 2013) (“[T]he District of Columbia has a stronger local interest in this action than this district because the administrative process occurred in the District of Columbia[.]”); *Ctr. for Food Safety v. Vilsack*, Civ. A. No. 11-0831, 2011 WL 996343, at *7 (N.D. Cal. Mar. 17, 2011) (when the federal defendants had made the challenged agency decisions “in the District of Columbia and Federal Defendants reside[d] there, the District of Columbia ha[d the] stronger local interest”). It is beyond dispute that the decision-making in connection with the challenged actions occurred exclusively in the District of Columbia where both Defendants reside, making this factor weigh heavily in favor of transfer.

e. Relative Court Congestion in Each Forum Weighs in Favor of Transfer.

The relative congestion of this Court in comparison to the District of Columbia also weighs in favor of transfer. Administrative difficulties are assessed by considering whether adjudication “may be speedier in another court because of its less crowded docket.” *Gates Learjet Corp. v. Jensen*, 743 F.2d 1325, 1337 (9th Cir. 1984). In the twelve-month period ending June 30, 2026, the median time for a civil case to proceed from filing to disposition in the District for the District of Columbia was 7.1 months. Federal Court Management Statistics, U.S. District Courts-Combined Civil and Criminal at 2, Admin. Off. of the U.S. Courts (June 2026), available at:

https://www.uscourts.gov/sites/default/files/document/fcms_na_distprofile0630.2026.pdf. In the same period, the median time for a civil case to proceed from filing to disposition in the District of Oregon was 9.4 months. *Id.* at 74. In that twelve-month period, there were 348 filings per judge in the District of Columbia, and, by comparison, there were 560 filings per judge in the District of Oregon. *Id.* at 2, 74.

There is thus greater congestion in the District of Oregon, and this factor weighs in favor of transfer. *See Ward*, 2009 WL 10692461, at *6 (finding congestion weighed in favor of transfer to Southern District of Alabama when median time from filing to disposition was 10.1 months in the District of Oregon versus 7.3 months in the Southern District of Alabama).

f. The Interests of Justice Weigh in Favor of Transfer.

“In determining whether to transfer a case . . . , the district court must determine whether the ‘interests of justice’ dictate such a transfer.” *Sherar v. Harless*, 561 F.2d 791, 794 (9th Cir. 1977). The interests of justice refer to “those public-interest factors of systemic integrity and fairness.” *Stewart Org.*, 487 U.S. at 30.

If the Court were to allow this case to stay in this District, it would be sealing its approval for the Second Circuit States and other plaintiffs in the future to circumvent already clear, binding precedent from their own jurisdictions. Moreover, the District of Columbia is a neutral forum to consider this matter, which involves questions of federal preemption and federal law with a national scope, and whereas here, all the decision-making occurred in the District of Columbia, it is the key place where ten States’ cause of action accrued and where the interests of justice can best be served in adjudicating this matter.

III. The States’ Challenge to the Powers Rule (Count One) Fails.

Lastly, even if the Court had jurisdiction and even were venue proper and convenient here, the Court should dismiss Count One as to the Powers Rule because it fails to state a claim. In

Count One, the States allege that the OCC exceeded its statutory authority and acted contrary to law in promulgating the Powers Rule and Preemption Determination. Compl. ¶¶ 94-101. Particularly, they allege that both the Powers Rule and Preemption Determination “exceed the OCC’s preemption authority under Dodd-Frank by creating a new national bank power solely to preempt state laws and by misapplying the *Barnett Bank* standard to deem all state interest-on-escrow laws preempted.” *Id.* ¶ 97.

Contrary to the States’ allegations, however, the OCC did not create a new bank power or issue the Powers Rule simply to preempt state laws. As the Preambles to both the Powers Rule and Preemption Determination make clear, the OCC issued two separate actions based on distinct authorities. Whereas the OCC issued the Preemption Determination pursuant to the Supremacy Clause, Dodd-Frank, and the *Barnett* standard—Preemption Determination, 91 Fed. Reg. at 29353-54—the OCC specifically issued the Powers Rule to codify national bank powers that Congress authorized pursuant to the National Bank Act, specifically 12 U.S.C. §§ 24 (Seventh), 93a, and 371(a). Powers Rule, 91 Fed. Reg. at 29342-45.

Given that the National Bank Act is the source of the OCC’s authority for issuing the Powers Rule, the OCC made clear that it was issuing the Powers Rule to “codify longstanding and recognized powers” of national banks and provide “clarity” to the regulated community. Powers Rule, 91 Fed. Reg. at 29340-41. Thus, because the States’ allegations contradict the public record of which this Court may take notice, *see Gemtel Corp.*, 23 F.3d at 1544 n.1, the Court may find on this basis alone that Count One fails to plausibly allege any violation of the APA with respect to the Powers Rule. *See Iqbal*, 556 U.S. at 679.

But even if the OCC had issued the Powers Rule simply to preempt states’ interest-on-escrow laws, the States still fail to allege that the OCC would have exceeded its statutory authority

or acted contrary to law in doing so. Neither 12 U.S.C. §§ 24 (Seventh), 93a, nor 371(a), which form the basis of the OCC’s statutory authority to promulgate the Powers Rule, prohibits the OCC from being motivated by preemption when exercising such authority. In fact, each of these federal statutes vests the OCC with broad discretion to decide whether and on what basis to issue implementing regulations. 12 U.S.C. §§ 24 (Seventh), 93a, 371(a). Nor is there a basis to conclude that Congress silently circumscribed these OCC rulemaking authorities by some unspecified degree in Dodd-Frank through 12 U.S.C. § 25b which addressed preemption—not national bank powers. In fact, Congress did the opposite, expressly affirming the agency’s other broad interpretive authorities and distinguishing them from its preemption authority. *See* 12 U.S.C. § 25b(b)(5) (codifying *Skidmore* deference for OCC preemption determinations but preserving in a savings clause potentially greater deference applicable to other OCC interpretations of federal law).

Similarly, the States cannot salvage their claim as to the Powers Rule by suggesting that the OCC did not correctly apply *Barnett Bank*, *Cantero I*, or Dodd-Frank. Compl. ¶¶ 98-99. Unlike the Preemption Determination, the Powers Rule did not contain a preemption analysis, nor did it conclude that any state laws were preempted. Powers Rule, 91 Fed. Reg. at 29345-46. While a preemption determination may require a *Barnett Bank* analysis and compliance with Dodd-Frank, 12 U.S.C. § 25b, there are no such requirements for the OCC when promulgating rules about national bank powers. *See* 12 U.S.C. §§ 24 (Seventh), 93a, 371(a); *see also Smiley v. Citibank (S.D.), N.A.*, 517 U.S. 735, 743-44 (1996) (recognizing the distinction between determining the substantive meaning of a statute on the one hand and its preemptive effect on the other, even in the context of a statute that expressly supplants state law); *California v. OCC*, 584 F. Supp. 3d 844, 851-54 (N.D. Cal. 2022) (recognizing that a “preemption determination” under

12 U.S.C. § 25b is an “affirmative act” by the OCC that considers and resolves whether a particular state consumer financial law is preempted).

The Court should thus dismiss Count One for failure to state a claim as to the Powers Rule.

CONCLUSION

The Court should dismiss Plaintiffs’ Complaint in its entirety. Alternatively, the Court should transfer the case to the District of Columbia.

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Respectfully submitted,

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