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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 FOR A
PARTIAL STAY OF PROCEEDINGS

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. Plaintiffs have requested that Defendants note for the Court that Plaintiffs anticipate filing a status report in advance of Wednesday's hearing. Defendants believe this filing is procedurally improper. The Court has not requested a status report from either party. Moreover, Defendants have reviewed a draft of Plaintiffs' proposed filing and, although it is styled as a status report, it does not resemble one. Instead of addressing procedural issues or apprising the Court of the status of this matter, the document raises substantive arguments. Specifically, Plaintiffs appear intent on using a status report as a vehicle to oppose Defendants' pending motions and to request a scheduling order. Defendants are unaware of any rule or procedure that would permit this filing; to the contrary, requests for judicial relief must be made in a motion. Fed. R. Civ. P. 7(b) ("A request for a court order must be made by motion."). The Court should therefore disregard Plaintiffs' status report if they choose to file it.

* * *

Pursuant to the Court's inherent authority, 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 stay all proceedings in this matter, other than proceedings necessary to resolve their pending motion to dismiss or alternative motion to transfer, pending resolution of the Supreme Court's proceedings in *Citizens Bank, N.A. v. Conti*, No. 25-1004, *Cantero v. Bank of America, N.A.*, No. 25-1313, and *Flagstar Bank, N.A. v. Kivett*, No. 25-1350.

Dated: October 9, 2026

Respectfully submitted,

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MEMORANDUM OF LAW IN SUPPORT
OF DEFENDANTS' MOTION FOR A
PARTIAL STAY OF PROCEEDINGS

Pursuant to the Court’s inherent authority, Defendants the Office of the Comptroller of the Currency and Jonathan V. Gould, in his official capacity as Comptroller of the Currency (collectively, the “OCC”), respectfully move to stay all proceedings in this matter—other than proceedings necessary to resolve the OCC’s pending motion to dismiss or alternative motion to transfer—until resolution of the Supreme Court’s proceedings in *Citizens Bank, N.A. v. Conti*, No. 25-1004 (“*Conti*”), *Cantero v. Bank of America, N.A.*, No. 25-1313 (“*Cantero*”), and *Flagstar Bank, N.A. v. Kivett*, No. 25-1350 (“*Kivett*”).

INTRODUCTION

The Supreme Court is currently considering whether to grant certiorari in *Conti*, *Cantero*, and *Kivett*. All three cases involve a common legal question that is also at issue in this case, namely, the proper application of the National Bank Act preemption standard under *Barnett Bank of Marion County, N.A. v. Nelson*, 517 U.S. 25 (1996)—a standard later clarified by the Supreme Court in *Cantero v. Bank of America, N.A.*, 602 U.S. 205 (2024) (“*Cantero I*”)—to state interest-on-escrow laws. There is no dispute that the *Barnett Bank* preemption standard will govern any review of the OCC preemption action being challenged in this Administrative Procedure Act (“APA”) lawsuit. As such, a Supreme Court decision in any of these three pending cases would likely control or substantially affect the outcome of this case. Indeed, if the Supreme Court finds that state interest-on-escrow laws are preempted by the National Bank Act and preexisting OCC regulations, no plaintiff state can trace any injury whatsoever to the OCC’s recent regulatory actions.

Therefore, the Court should partially stay this case pending the resolution of the Supreme Court’s proceedings in *Conti*, *Cantero*, and *Kivett*.

PROCEDURAL HISTORY

This is an APA case challenging two OCC regulatory actions. Compl., Dkt. No. 1. The first action is an OCC rule clarifying that national bank powers include a bank’s ability to establish and set the terms and conditions for paying or not paying interest on mortgage escrow accounts. *See id.* ¶ 10; Real Estate Lending Escrow Accounts, 91 Fed. Reg. 29340 (May 19, 2026) (“Powers Rule”). The second action is the OCC’s determination that the National Bank Act preempts certain state laws that set requirements for banks to pay interest on mortgage escrow accounts. *See* Compl. ¶ 8; Preemption Determination: State Interest-on-Escrow Laws, 91 Fed. Reg. 29350 (May 19, 2026) (“Preemption Determination”).

Ten states with interest-on-escrow laws allege that the OCC exceeded its statutory authority, acted contrary to law, and acted arbitrarily and capriciously in promulgating the Powers Rule and Preemption Determination. Compl. ¶¶ 94-107. Among other claims, the ten states allege that the OCC misapplied the applicable standard for making preemption determinations pertaining to their interest-on-escrow laws as articulated in *Barnett Bank*, a standard later clarified by the Supreme Court in *Cantero I*. Compl. ¶¶ 14-15, 87-88, 90, 97-98.

In *Barnett Bank*, the Supreme Court held that a state law is preempted by the National Bank Act if it “prevent[s] or significantly interfere[s] with the national bank’s exercise of its powers.” 517 U.S. at 33. In *Cantero I*, the Supreme Court considered a Second Circuit decision that found New York’s interest-on-escrow law was preempted by the National Bank Act. 602 U.S. at 219-20. In remanding back to the Second Circuit, the Supreme Court in *Cantero I* found a *Barnett Bank* application requires a court to “make a practical assessment of the nature and degree of the interference caused by a state law” based on the text and structure of the state law, comparison to precedent, and common sense. *Id.* This assessment may also include a comparative analysis of

Barnett Bank and six antecedent Supreme Court cases cited in *Barnett Bank*. *Id.* Shortly thereafter, the Supreme Court also vacated and remanded a Ninth Circuit case involving preemption of California’s interest-on-escrow law for further consideration given *Cantero I. Flagstar Bank, N.A. v. Kivett*, 144 S. Ct. 2628 (2024).

In light of *Cantero I*, the First, Second, and Ninth Circuits issued new decisions which, although applying the same Supreme Court standard, came to differing conclusions on the ultimate question of whether the National Bank Act preempts state interest-on-escrow laws, thus creating a circuit split on the issue. *See Conti v. Citizens Bank, N.A.*, 157 F.4th 10, 28 (1st Cir. 2025) (concluding Rhode Island’s interest-on-escrow law was not preempted by the National Bank Act); *Cantero v. Bank of Am., N.A.*, 175 F.4th 201, 215-16 (2d Cir. 2026) (“*Cantero II*”) (concluding New York’s interest-on-escrow law was 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 earlier conclusion that a California interest-on-escrow law was not preempted), *reh’g denied*, No. 21-15667 (9th Cir. Mar. 26, 2026).

When the ten states filed suit in this case on August 11, 2026, the Supreme Court was considering petitions for certiorari in these three cases. *See* Pet. for Reh’g, *Conti, supra*; Pet. for Cert., *Cantero, supra*; Pet. for Cert., *Kivett, supra*. On October 5, 2026, the OCC moved to dismiss this case or, alternatively, to transfer the case to the District of Columbia. Mot., Dkt. No. 16. On the same day, the Supreme Court asked the Solicitor General for briefing on the views of the United States in *Conti*, *Cantero*, and *Kivett*. *See* Order List of Oct. 5, 2026, available at: https://www.supremecourt.gov/orders/courtorders/100526zor_2a34.pdf.

The OCC now respectfully moves to stay all proceedings in this matter, other than proceedings necessary to resolve the OCC's pending motion to dismiss or alternative motion to transfer, until resolution of the Supreme Court's proceedings in *Conti*, *Cantero*, and *Kivett*.

LEGAL STANDARD

"The District Court has broad discretion to stay proceedings as an incident to its power to control its own docket." *Clinton v. Jones*, 520 U.S. 681, 706 (1997). In granting a stay, the Court considers "economy of time and effort for [the Court], for counsel, and for litigants." *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936). Thus, the Court's decision to grant a stay "calls for the exercise of judgment, which must weigh competing interests and maintain an even balance." *Id.* at 254-55.

Courts must weigh the following factors when granting a stay: "(1) 'the possible damage which may result from the granting of a stay'; (2) 'the hardship or inequity which a party may suffer in being required to go forward'; and (3) 'the orderly course of justice measured in terms of the simplifying or complicating of issues, proof, and questions of law.'" *Ernest Bock, LLC v. Steelman*, 76 F.4th 827, 842 (9th Cir. 2023) (quoting *Lockyer v. Mirant Corp.*, 398 F.3d 1098, 1110 (9th Cir. 2005)).

ARGUMENT

Here, all three factors weigh in favor of granting a partial stay of this case pending resolution of the Supreme Court's proceedings in *Conti*, *Cantero*, and *Kivett*. That is, while the Court should assess the OCC's threshold jurisdictional and venue arguments, there is no reason this case should move towards the merits when an overlapping merits dispute is presently being considered for a writ of certiorari by the Supreme Court.

A stay pending the Supreme Court's resolution of proceedings in these three cases would promote judicial economy. The Ninth Circuit has specifically allowed district courts to stay a case

“pending resolution of independent proceedings which bear upon the case,” and has clarified “that the issues in such [independent] proceedings” do not even need to be “necessarily controlling of the action before the [district] court” for a stay to be nonetheless warranted. *Leyva v. Certified Grocers of Ca.*, 593 F.2d 857, 863-64 (9th Cir. 1979).

Here, there is no doubt that the issues in *Conti*, *Cantero*, and *Kivett* are central to this Court’s resolution of this case. In all three cases, the appellate court considered whether the National Bank Act preempts state interest-on-escrow laws. *See Conti*, 157 F.4th at 12; *Cantero II*, 175 F.4th at 206; *Kivett*, 154 F.4th at 642. Given the existing circuit split and the fact that the Supreme Court has asked for the United States’s views on granting certiorari in these cases, there is a strong likelihood that the Supreme Court will resolve any lingering questions regarding the application of the *Barnett Bank* test for preemption of state interest-on-escrow laws. Additional clarity that may be provided by the Supreme Court will govern this Court’s analysis of at least the OCC’s Preemption Determination, which specifically determined that certain states’ interest-on-escrow laws were preempted by the National Bank Act. The Dodd-Frank Act specifically authorizes the OCC to preempt a state consumer financial law as long as the OCC does so on a case-by-case basis and determines “in accordance with the legal standard for preemption in the decision of the Supreme Court of the United States in *Barnett Bank*[], the State consumer financial law prevents or significantly interferes with the exercise by the national bank of its powers.” 12 U.S.C. § 25b(b)(1)(B).

A stay will obviate the need for this Court to expend resources addressing the merits of this suit before the Supreme Court has a chance to address the matters pending before it, which present overlapping issues. That is, should the Court disagree with the OCC regarding jurisdictional and venue issues, a stay will save the parties and the Court from expending resources on merits briefing

and the production and review of administrative records before having the benefit of the Supreme Court’s clarification of the application of the *Barnett Bank* standard to the same state laws that are at issue in this case.

Notably, “[the Ninth Circuit] ha[s] repeatedly held that a district court does not abuse its discretion by staying litigation for efficiency reasons pending resolution of other related proceedings.” *In re PG&E Corp. Sec. Litig.*, 100 F.4th 1076, 1086 (9th Cir. 2024) (citing cases; finding district court had not abused its discretion in finding judicial efficiency and only vacating stay because court had not also weighed prejudice to the parties); *see also, e.g., United States v. Lasich*, Cr. A. No. 02-0305-BR, 2017 WL 6542791, at *4 (D. Or. Dec. 21, 2017) (staying case pending Supreme Court decision that would resolve issues in case); *Ashby v. Farmers Grp., Inc.*, Civ. A. No. 01-1446-BR, 2006 WL 3169381, at *1 (D. Or. Oct. 30, 2006) (staying further proceedings pending a Supreme Court decision in light of “the significance of the Supreme Court’s ultimate decision to any future ruling on [a legal] issue” in the case); *Fletes v. John I. Haas, Inc.*, Civ. A. No. 89-0085-FR, 1989 WL 151722, at *1-2 (D. Or. Nov. 29, 1989) (staying trial after finding “it would be a waste of judicial resources and a hardship on [defendant] to conduct a trial until the decision in [then-pending Supreme Court case] clarifies the applicable law.”).

Further, a stay will not cause any damage or prejudice to Plaintiffs. The case is still in its early stages. While this Court cannot fully predict the timing of Supreme Court proceedings, there is no reason to believe that briefing from the Solicitor General, or other briefing and oral argument to the extent certiorari is granted, will be unduly delayed in *Conti*, *Cantero*, and *Kivett*. Moreover, as explained by the OCC in moving to dismiss, Plaintiffs have failed to sufficiently allege that they have even been or are being harmed by the OCC’s two actions. OCC Mem. at 12-17, Dkt. No. 16. Indeed, Plaintiffs have failed to show that they have standing to bring this case or that their case is

even ripe for review. *Id.* at 12-20. Accordingly, there is no basis to infer that any delay from the stay pending the resolution of the Supreme Court's proceedings will cause any hardship, inequity, or prejudice to Plaintiffs.

In sum, the parties will suffer no injury or prejudice from a partial stay. By contrast, the Court will enjoy significant judicial economy by waiting for the Supreme Court's clarified views on the legal standard at issue before turning to the merits of this case (should that prove necessary if the Court finds this case to be justiciable and properly venued in this district). Therefore, the Court should stay this case (other than proceedings necessary to resolve the OCC's pending motion to dismiss or alternative motion to transfer, which raises threshold issues that independently should dispose of this case).

* * *

CONCLUSION

For these reasons, the Court should stay all proceedings in this matter, other than proceedings necessary to resolve the OCC's pending motion to dismiss or alternative motion to transfer, pending the resolution of the Supreme Court's proceedings in *Conti*, *Cantero*, and *Kivett*. Defendants respectfully suggest that the Court order the parties to file a joint status report within one week of the Supreme Court's decision on the pending certiorari petitions in *Conti*, *Cantero*, and *Kivett* to advise the Court of such developments.

Dated: October 9, 2026

Respectfully submitted,

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