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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

REPLY IN FURTHER SUPPORT OF DEFENDANTS' MOTION TO DISMISS OR, IN THE ALTERNATIVE, TO TRANSFER

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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 file this reply in further support of their Motion to Dismiss, or alternatively, Motion to Transfer ("Motion"). For the reasons stated in Defendants' memorandum in support of their Motion ("Opening Brief") and below, the Court should dismiss this case, or alternatively, transfer it to the District of Columbia.

INTRODUCTION

The State of Oregon and nine states not found in this District (collectively, the "States") rushed into this District to challenge the OCC's exercise of its congressionally authorized authority to clarify national bank powers regarding mortgage escrow accounts and to preempt contrary state law.[1] The States, however, have failed to establish an injury that is more than just theoretical or that is ripe for this Court's review. Indeed, the States concede that they have no allegation that any national bank is failing to provide interest on escrow accounts in Oregon.

Rather, as their Opposition makes clear, their decision to bring this challenge as a multi-state litigation is nothing more than a vehicle for the States of New York, Connecticut, and Vermont (the "Second Circuit States") to avoid recent, clear, binding, and unfavorable Second Circuit precedent. *Cantero v. Bank of Am., N.A.*, 175 F.4th 201 (2d Cir. 2026) ("*Cantero II*"). Notably, the States make no attempt to persuade this Court that they are not engaging in forum-shopping. Rather, by insisting that the Second Circuit States can engage in double-

[1] As with the OCC's moving papers, while this reply'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); *id.* § 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). Further, although 12 U.S.C. § 371 is part of the Federal Reserve Act, references to the National Bank Act generally include Section 371, which authorizes national banks to engage in real estate lending.

bootstrapping—bootstrapping both their standing and venue from co-plaintiffs—the States all but concede that this case is nothing more than a cover for impermissible forum-shopping. These tactics should not stand.

For these reasons, and those set forth below and in Defendants' Opening Brief, the Court should dismiss this case or, alternatively, transfer it to the District of Columbia.

ARGUMENT

The Court should dismiss or transfer this suit for many reasons. The States have failed to meet their burden to demonstrate standing and ripeness. There is also still a serious question whether the non-Oregon states can establish proper venue in this District, and even so, the States fail to demonstrate how transfer is not otherwise convenient and in the interests of justice. Also, even were standing and venue satisfied, the States nonetheless fail to state a claim that the OCC exceeded its statutory authority or acted contrary to law in promulgating the rule on Real Estate Lending Escrow Accounts, 91 Fed. Reg. 29340, 29340 (May 19, 2026) (the "Powers Rule").

I. The Court Lacks Subject Matter Jurisdiction.

As demonstrated in the OCC's Opening Brief, the States' claims fail out of the gate because the States have not alleged facts sufficient to confer standing, and their claims are not ripe. Open. Br. (Dkt. No. 16) at 12-20 (citing *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016); *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560-61 (1992); and *Trump v. California*, 609 U.S. 1032, 1035 (2026)). The States' Opposition does not demonstrate otherwise. Because the States fail to sufficiently allege standing and ripeness, 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' alleged injury begins and ends with their assertion that they have "a sovereign interest in enforcing their interest-on-escrow laws" and that, because the Powers Rule

and Preemption Determination: State Interest-on-Escrow Laws, 91 Fed. Reg. 29350, 29350 (May 19, 2026) (the "Preemption Determination"), "purport to preempt Plaintiffs' statutes, Plaintiffs have standing to challenge them." Open. Br. (Dkt. No. 16) at 14[2] (quoting Compl. (Dkt. No. 1) ¶ 93). These allegations are exactly the sort of "mere legal conclusion[]" that the Ninth Circuit has explicitly rejected for purposes of deciding jurisdiction. Open. Br. (Dkt. No. 16) at 14 (citing *Leite v. Crane Co.*, 749 F.3d 1117, 1121 (9th Cir. 2014)). The States respond that "States have a sovereign interest in the enforceability of their laws and thus have standing to challenge a federal statute or regulation that purports to preempt state law." Pls.' Opp'n to Mot. ("Opp'n," Dkt. No. 20) at 8-9. The States' argument fails for several reasons.

First, the States concede that they cannot establish standing under a *parens patriae* theory. Opp'n (Dkt. No. 20) at 12. Accordingly, while the States filed a pleading with this Court claiming an interest in "ensuring their residents continue receiving interest payments[,]" Compl. (Dkt. No. 1) ¶ 93, they now have disclaimed that interest as a basis for jurisdiction.

Second, the States ask too much of the cases they cite in support of the proposition that their speculative injury allegations are sufficient. Neither the Powers Rule nor the Preemption Determination prohibit any bank from complying with state interest-on-escrow rules notwithstanding their inapplicability—i.e., a national bank can opt to comply with a state law if it chooses. *See* Open. Br. (Dkt. No. 16) at 7-8, 15. Yet the States' cited cases all involved situations where it was impossible to give effect to both the challenged federal law and the relevant state law. That is, in the cases cited by the States the injuries to sovereignty were not merely speculative—federal law directed the parties to act contrary to the requirements of state law. *See Colorado v. Toll*, 268 U.S. 228 (1925) (finding standing with respect to state challenged federal regulation

[2] All citations are to the page numbers in the footer.

banning common carrier passenger vehicles in Rocky Mountain National Park, except those operating under federal government franchises, thus making it impossible for the state to enforce applicable state law that might allow for transit by other common carriers on the state roads included in the park); *Arizona v. Atchison, T. & S. F. R. Co.*, 656 F.2d 398, 401-02 (9th Cir. 1981) (finding that the controversy was ripe where state challenged federal statute that banned taxation of railroad property at the rates the state had been applying, even though the federal statute was not yet in effect); *Alaska v. Dep't of Transp.*, 868 F.2d 441, 443 (D.C. Cir. 1989) (finding standing with respect to state challenge to federal regulation that allowed advertisements to unbundle travel surcharges from base fees where agency informed states that federal regulation preempted state law that essentially made unbundling a deceptive practice); *Texas v. United States*, 809 F.3d 134, 153 (5th Cir. 2015) (finding standing with respect to federal policy classifying certain non-citizens as lawfully present where state alleged that preemption would prevent it from discriminating against such persons regarding drivers' license issuance); *Kentucky v. Biden*, 23 F.4th 585, 598-99 (6th Cir. 2022) (finding standing to challenge federal guidance mandating that the employees of federal contractors in covered contracts with the federal government become fully vaccinated against COVID-19, where the states had contrary vaccination policies that would be overridden with respect to federal contractors and employees had indicated intent not to comply with federal law); *Wyoming ex rel. Crank v. United States*, 539 F.3d 1236, 1240-42 (10th Cir. 2008) (finding standing with respect to agency interpretation of the term "expunge" for the purposes of restoring firearms rights under federal law, where agency interpretation interfered with state's ability to enforce statute purporting to restore firearms rights after records for certain offenses were sealed but not eliminated for other purposes); *Oregon v. Ashcroft*, 192 F. Supp. 2d 1077, 1079, 1087 (D. Or. 2002), *aff'd*, 368 F.3d 1118 (9th Cir. 2004), *aff'd sub nom.*, *Gonzales v. Oregon*, 546 U.S. 243

(2006) (finding standing with respect to agency interpretation of the Controlled Substances Act, where that interpretation "essentially nullified" the state's doctor-assisted suicide law); *California v. United States*, Civ. A. No. 05-0328, 2005 WL 1513156, at *3 (N.D. Cal. June 27, 2005) (finding standing to challenge federal statute that denied federal funds to state and local governments where those jurisdictions were found to penalize healthcare entities for not providing or covering abortion services, where conflicting state statutory scheme required certain health care facilities to provide medically necessary emergency abortions). Because the OCC's regulatory actions allow a national bank to act in a manner consistent with state law, there is no automatic actual injury that any state has suffered from those regulatory actions.

Third, even if the Court finds that the States have sufficiently pled prospectively cognizable injuries to their sovereign interests (they have not), any such injuries are plainly not ripe for judicial review. *See* Open. Br. (Dkt. No. 16) at 15-16. As the OCC has explained, because neither the Powers Rule nor the Preemption Determination actually prohibit any national bank from paying interest-on-escrow—and because the States have not alleged that any national bank has failed to pay interest-on-escrow consistent with their state laws[3]—their asserted harm relies on speculation contingent upon the occurrence of hypothetical events. *Id*. The States suggest that the Ninth Circuit and others have found these distinctions to be irrelevant in the context of alleged sovereign injury. *See* Opp'n (Dkt. No. 20) at 9-10 (collecting cases). But, of the cases the States cite, only two even nominally address ripeness: *Atchison*, 656 F.2d at 402-03, and *California*, 2005 WL 1513156, at *2. The rest make no mention of the doctrine at all. *See Toll*, 268 U.S. at 228 (no

[3] Notably, the plaintiffs in *Flagstar Bank, N.A. v. Kivett*, No. 25-1350 (U.S.), confirmed that "all residential mortgage servicers (whether national banks, state banks, or non-banks) except Flagstar have routinely complied with the California [interest-on-escrow] law[.]" Br. in Opp'n at 13, *Kivett, supra*.

mention of ripeness); *Washington v. FDA*, 108 F.4th 1163 (9th Cir. 2024) (same); *Alaska*, 868 F.2d at 441 (same); *Kentucky*, 23 F.4th at 585 (same); *Wyoming*, 539 F.3d 1236 (same); *Texas*, 809 F.3d at 134 (no mention of ripeness in court's opinion); *Oregon*, 192 F. Supp. 2d at 1079, 1087 (same).

As for the two cases that actually mention ripeness, the district court in *California* merely made a drive-by reference to the doctrine without any discussion of its application. *See California*, 2005 WL 1513156, at *2 ("The only element of standing at issue in this matter is whether Plaintiffs have sufficiently alleged an injury in fact to demonstrate standing and to show that this matter is ripe."). Indeed, the *California* court's analysis focused solely on standing. *Id.* at *2-3. And of course, that unreported decision from 2005 did not apply the Supreme Court's intervening decisions making it clear that disputes concerning conflicts between state and federal law do not become justiciable until there is a conflict with state law that a state is unable to address. *Compare California*, 2005 WL 1513156, at *3 ("The mere conflict between state and federal law, and thus, the states' consequent inability to enforce their own laws, was sufficient to demonstrate an injury for standing purposes."), *with Trump*, 609 U.S. at 1036-37 (finding alleged injury unripe when federal action directed Secretary to take action and impact on state action was unclear).

The States' ripeness argument thus reduces to their reliance on *Atchison*. But again, that case involved a situation in which the federal law was clearly inconsistent with the property tax rates that the state had been applying to railroad property. *Atchison*, 656 F.2d at 401-02. Thus, the state's asserted injury was not contingent upon the hypothetical actions of third parties (like banks deciding whether to pay interest on escrow accounts). Instead, it was clear that the state could not continue to enforce its tax rates and comply with the federal law at the same time. *Id.*

Ultimately, recent precedent from the Supreme Court makes clear that standing and ripeness are "related" but distinct. *Trump*, 609 U.S. at 1035. Standing requires a "concrete,

particularized, and imminent," not "conjectural or hypothetical," injury, whereas ripeness "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." *Id.* (citation modified). Importantly, alleged injuries that rely on a "chain of inferences" and speculation about future events are insufficient. *Id.* at 1036, 1039. Here, that is exactly what the States incorrectly ask this Court to accept. Ultimately, at present, any injury to any sovereign interest here is metaphysical, requiring an independent future action of a national bank to transcend into reality. As such, even if the States have a sovereign injury sufficient for standing, that injury is not yet ripe for adjudication.

B. The States Fail to Demonstrate Any Injury-in-Fact Stemming from the Powers Rule.

In addition, the Powers Rule is separate from the Preemption Determination and the States' Complaint failed to allege how the Powers Rule—which simply codified certain banking powers—causes harm in and of itself. Open. Br. (Dkt. No. 16) at 14-15. In response, the States argue that they were not required to separately plead injury with respect to the Powers Rule because "[t]he Rules assert that they work in conjunction to preempt Plaintiff States' laws" and the "Powers Rule purports to nullify Plaintiff States' interest-on-escrow laws and directly interferes with the States' enforcement of those laws by granting national banks exclusive power to decide whether they pay interest on escrow." Opp'n (Dkt. No. 20) at 11-12.

The States are wrong, and their argument fails for two reasons. *First*, the States purport to challenge two separate agency actions and, because "standing is not dispensed in gross," courts must address each challenged provision separately. *Trump*, 609 U.S. at 1035 (quoting *TransUnion LLC v. Ramirez*, 594 U.S. 413, 431 (2021)). *Second*, and relatedly, the States cannot amend their complaint through dispositive briefing. *Borgman v. Yamaha Motor Corp., USA*, 636 F. Supp. 3d

1012, 1031 (D. Alaska 2022). Therefore, the States cannot cure their pleading deficiencies by explaining in their opposition that the Powers Rule harmed them as well.

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

In its Opening Brief, the OCC also demonstrated that three of the States—New York, Connecticut, and Vermont—cannot establish traceability or redressability to support their standing in light of the binding conclusion from the Second Circuit's decision in *Cantero II* that the National Bank Act preempts state interest-on-escrow laws independent of the OCC's Powers Rule or Preemption Determination. Open. Br. (Dkt. No. 16) at 17-20 (citing *Wash. Env't Council v. Bellon*, 732 F.3d 1131, 1146 (9th Cir. 2013); *Lujan*, 504 U.S. at 560-62; and *G.B. ex rel. G.P. v. EPA*, 172 F.4th 1042, 1063-64 (9th Cir. 2026)). In opposition, the States argue that: (1) it does not matter whether the Second Circuit States can establish standing because the other states can, (2) *Cantero II* does not establish that federal law preempts either Vermont or Connecticut's interest-on-escrow statute, and (3) because the Powers Rule and Preemption Determination were issued after *Cantero II*, they independently harm New York. Opp'n (Dkt. No. 20) at 12-14. Each of these arguments fail in turn.

First, as discussed above, no State has established a cognizable, ripe injury. Therefore, the Second Circuit States have no valid plaintiff upon which to piggy-back. Moreover, after the Supreme Court's ruling in *Trump v. CASA, Inc.*, 606 U.S. 831, 861-62 (2025), this Court cannot issue any universal injunction or other nationwide equitable relief, thus casting doubt on prior precedent allowing parties who cannot establish standing to ride the coattails of those who can.

Second, the States' assertion that *Cantero II* does not establish that Connecticut's and Vermont's laws are preempted because of variations between those state laws and New York's falls short. Although the States' Opposition asserts that "as alleged in the Complaint, those laws have materially different features from New York's[,]" neither the States' Opposition nor the

Complaint explains why variations in the state laws are "material[]" or how any such differences make *Cantero II* inapplicable. *See* Opp'n (Dkt. No. 20) at 13; Compl. (Dkt. No. 1) ¶ 46 ("New York's interest-on-escrow statute, enacted in 1974, requires lenders pay borrowers interest on the funds deposited into an escrow account at a rate of 2% or at a rate set by the superintendent of financial services, whichever is higher. New York also prohibits lenders from imposing service charges on the maintenance of escrow accounts." (citation omitted)); *id.* ¶ 49 ("Vermont requires lenders to pay borrowers interest at a rate equal to the rate paid on a regular savings account, if offered, and otherwise at a rate not less than the prevailing rate offered by local financial institutions."); *id.* ¶ 41 ("Connecticut requires lenders to pay borrowers with an escrow account interest at an adjustable rate not less than the average of the national rates for savings deposits and money market deposits for the prior year."). To repeat, 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." Open. Br. (Dkt. No. 16) at 19 (quoting *Diamond Alt. Energy, LLC v. EPA*, 606 U.S. 100, 121 (2025)). In *Cantero II* the Second Circuit found that a state law that dictates whether and to what extent a national bank must pay interest on funds held in an escrow account are preempted by the National Bank Act, *Cantero II*, 175 F.4th at 215, and all states in that Circuit are bound by the decision. Thus, the States have not met their burden of demonstrating anything to the contrary.

Third and finally, the Second Circuit States are incorrect that they can establish the redressability prong of standing to challenge the Powers Rule and Preemption Determination notwithstanding the holding in *Cantero II*. The Second Circuit States suggest that the prospect of vacating the Powers Rule or Preemption Determination is sufficient for redressability because they need only seek to remedy "an injury, not every injury." Opp'n (Dkt. No. 20) at 14 (citing *Matsumoto v. Labrador*, 122 F.4th 787, 801 (9th Cir. 2024)). But, in this case, the challenged

agency actions and *Cantero II* both create the same alleged injury: preemption of state interest-on-escrow laws. This is not the situation presented in *Matsumoto* where the court was looking at whether county officials might have authority to enforce the law at issue even if the court prevented state from enforcement activity. *Matsumoto*, 122 F.4th at 801 ("Where a state statute specifically grants enforcement powers to multiple government authorities, an injunction against the exercise of those powers by any one of those authorities suffices to establish redressability."). Here, the Second Circuit States' laws will still be preempted under the Second Circuit's reading of the National Bank Act in *Cantero II* regardless of the outcome of this case.

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

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

The States further fail to grapple with the serious consequences of keeping this case in Oregon. They fail to engage with assertions of forum-shopping other than to claim they have unbridled discretion to choose their forum. But the general right to choose a forum is not a golden ticket. And it certainly should not be one here where keeping the case in Oregon would contradict the plain, unambiguous text of the governing venue statute and facilitate the Second Circuit States' circumvention of binding precedent in their own jurisdiction.

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.

As the OCC argued, the plain, unambiguous text of 28 U.S.C. § 1391(e)(1) circumscribes when additional parties can be joined as parties in a civil action brought against a federal agency or officer. *See* Open. Br. (Dkt. No. 16) at 20-23. Because only Oregon can demonstrate proper venue under Section 1391(e)(1)(C), the nine other states must satisfy those requirements in Section 1391(e)(1) for joining additional parties, which they do not. *See* 28 U.S.C. § 1391(e)(1) ("Additional persons may be joined as parties to any such action in accordance with the Federal

Rules of Civil Procedure and 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."); Open. Br. (Dkt. No. 16) at 20-23.

In response, the Plaintiffs ask this Court to read blinkered the plain, unambiguous text of Section 1391(e)(1) and instead rely entirely on a single, decades old Ninth Circuit case, and two other aged Circuit decisions, none of which grappled with the plain, unambiguous text of Section 1391(e)(1). *See* Opp'n (Dkt. No. 20) at 15. But that approach directly conflicts with the modern-day interpretive standards required by the Supreme Court. *See* Open. Br. (Dkt. No. 16) at 20-23 (citing *Nat'l Ass'n of Mfrs. v. Dep't of Def.*, 583 U.S. 109, 127 (2018) (noting that the "inquiry begins with the statutory text, and ends there as well" when the statute is unambiguous (quoting *BedRoc Ltd., LLC v. United States*, 541 U.S. 176, 183 (2004)); and *Bostock v. Clayton County*, 590 U.S. 644, 653 (2020)).

Further, *Railway Labor Executives' Ass'n v. Interstate Commerce Comm'n*, 958 F.2d 252, 256 (9th Cir. 1991), the sole controlling precedent cited by the States, opined on venue in a "drive by" manner without mentioning the text of the venue statute, let alone employing the textualist approach now endorsed by the Supreme Court. *Cf. Arbaugh v. Y&H Corp.*, 546 U.S. 500, 511 (2006) ("drive-by jurisdictional rulings [ ] should be accorded no precedential effect on the question whether the federal court had authority to adjudicate the claim in suit" (citation modified)). Whether this means the conclusion in *Railway Labor Executives* "should be accorded no precedential effect[,]" *id.*, or is "clearly irreconcilable" with modern day Supreme Court authorities as to trigger serious reconsideration, *Miller v. Gammie*, 335 F.3d 889, 900 (9th Cir. 2003) (noting previous precedent can be overruled when "the relevant court of last resort" has "undercut the theory or reasoning underlying the prior circuit precedent in such a way that the

cases are clearly irreconcilable"), is academic. In either event, the crutch underlying any suggestion that this Court is an appropriate venue for the States besides Oregon is broken and cannot bear the weight that the States seek to place on it—namely, permitting the bootstrapping of venue for States that have suffered no injury in this district and allege no injury resulting from any events occurring in this district.

Additionally, that the Supreme Court or the Department of Justice may not have contested the venue of states in other multi-state litigation does not warrant ignoring the plain, unambiguous text of section 1391(e)(1). *See* Opp'n (Dkt. No. 20) at 15-16. Improper venue is a waivable defense under the Federal Rule of Civil Procedure 12(h). *See Leroy v. Great W. United Corp.*, 443 U.S. 173, 180 (1979); *Hoffman v. Blaski*, 363 U.S. 335, 343 (1960). As a result, courts have no occasion to address venue if a defendant has waived that defense. *See Leroy*, 443 U.S. at 180 (noting that an improper venue defense does not have "absolute strictures on the court" as it is a "personal privilege[] of the defendant" and not "fundamentally preliminary in the sense that subject-matter jurisdiction is."). Any Supreme Court silence on the propriety of venue in multi-state litigation cannot be inferred as affirmative approval of venue. Likewise, there are presumably any number of appropriate strategic reasons to waive venue, and thus, the government's choice to do so in other cases has no bearing on the viability of the venue arguments made here.

Finally, the nine non-Oregon States cannot establish venue by claiming they could independently satisfy venue in Oregon since a substantial part of the events or omissions giving rise to the claims occurred in Oregon (which, it should be noted, is incorrect). *See* Opp'n (Dkt. No. 20) at 16 (citing 28 U.S.C. § 1391(e)(1)(B)). It is the nine non-Oregon States' burden to demonstrate that each state can satisfy venue in Oregon once contested. *Piedmont Label Co. v. Sun Garden Packing Co.*, 598 F.2d 491, 496 (9th Cir. 1979). And here, the non-Oregon States do

not explain how a substantial part of the events giving rise to their claims could arise in Oregon when Oregon is only one of ten states challenging the preemption of their state interest-on-escrow laws. *See* Opp'n (Dkt. No. 20) at 16. Also, there is no allegation that any national bank is paying less interest on escrow accounts related to Oregonian mortgages than Oregon law directs. *See id*. There is further no other allegation as to how the events giving rise to the nine non-Oregon's claims regarding their respective interest-on-escrow laws could be said to have "occurred" in Oregon. And the States do not dispute that none of the OCC's decisions or decision-making occurred in Oregon. *See id.*

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

But even if venue were technically available here, the States have not meaningfully disputed the convenience of transferring this case to the District of Columbia. At the first step, the States do not dispute that they could have brought this action in the District of Columbia. *See* Opp'n (Dkt. No. 20) at 16-18; *Unimax Commc'ns, LLC v. T-Mobile US, Inc.*, No. 24-6871, 2025 WL 3090751, at *1 (9th Cir. Nov. 5, 2025) (finding plaintiff "waived its [legal] argument by failing to substantively address [legal argument] in its opposition to the motion to dismiss"). And at the second step, the States fail to tip the factors away from transfer.

1. The States' Choice of Forum Warrants No Deference.

The States cannot play their choice of forum as some kind of "get out of forum-shopping free" card. Any attempt to downplay forum-shopping in this Court's transfer analysis, *see* Opp'n (Dkt. No. 20) at 17-18, ultimately does not square with the Ninth Circuit's clear disapproval of the practice. *See 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)); *Vivendi SA v.*

T-Mobile USA Inc., 586 F.3d 689, 694 (9th Cir. 2009) (reducing deference for choice of forum for forum-shopping plaintiff). Notably, the States do not address any of this binding Ninth Circuit precedent cited in the OCC's Opening Brief. *See* Opp'n (Dkt. No. 20) at 17-18. And their reliance on *Adidas Am., Inc. v. Herbalife Int'l, Inc*., Civ. A. No. 09-0661-MO, 2010 WL 596584, at *7 (D. Or. Feb. 12, 2010), to plead for their choice of forum falls flat where the factors are not evenly balanced as they were in that case, *see* Open. Br. (Dkt. No. 16) at 23-29; *infra* § II.B.2-5, and where that case did not contend with evidence of forum-shopping as the Court has before it in the present case.

And here, there can be no doubt that the States are engaging in the very forum-shopping the Ninth Circuit strongly disavows. Indeed, the States' own Opposition highlights their true motives. In insisting the Second Circuit States need not establish their own standing or venue to bring their claims, *see* Opp'n (Dkt. No. 20) at 12-13, 15-16, (which is incorrect, *see supra* §§ I.C, II.A), the States themselves all but concede that the Second Circuit States do not have independent standing or venue in the Ninth Circuit and are attempting to piggyback off Oregon's purported standing and venue in this District to avoid the Second Circuit's reach. Nor does the States' choice of the Oregon Attorney General's Office as their lead counsel entitle them to unquestioning deference for their choice of forum. *See Encore D.E.C., LLC v. APRES1 I, LLC*, Civ. A. No. 3:14-1238-ST, 2014 WL 12576650, at *6 (D. Or. Dec. 22, 2014) ("Although [plaintiff] has chosen counsel in Oregon, this is not a valid consideration on a motion to transfer venue;" granting transfer motion); *Smith v. Aetna Life Ins. Co.*, Civ. A. No. 11-2559, 2011 WL 3904131, at *2 (N.D. Cal. Sept. 6, 2011) ("The convenience of counsel is not considered for purposes of deciding whether a venue is convenient for the purposes of § 1404(a);" granting transfer motion). That becomes especially true here where the States do not dispute that nine of the States do not reside

in Oregon, all the regulatory decision-making and generation of the administrative record occurred in the District of Columbia, and Oregon is not even physically convenient for most parties. *See* Opp'n (Dkt. No. 20) at 16-18; *Alec L. v. Jackson*, Civ. A. No. 11-2203, 2011 WL 8583134, at *3 (N.D. Cal. Dec. 6, 2011) (giving little weight to choice of forum where not all plaintiffs reside in district, with others residing in Virginia or Southern California, and operative facts occurred in District of Columbia).

2. The Convenience of the Witnesses and Access to Evidence and Familiarity with the Applicable Law Weigh in Favor of Transfer.

Next, neither the convenience of the witnesses nor familiarity with applicable law weighs against transfer. Even if the parties do not anticipate discovery in this matter, it cannot be simply ignored that should this case proceed to discovery, the relevant witnesses and records relating to the decision-making for the Powers Rule and Preemption Determination are in the District of Columbia. *See* Open. Br. (Dkt. No. 16) at 26-27 (collecting cases). Nor can it be ignored that this case involves an analysis of the interaction between federal and state law and requires equal knowledge of each Plaintiff State's law, not any unique familiarity with only Oregon law. *See id.* at 27. And again, especially here, where keeping the case in Oregon would allow the Second Circuit States to relitigate binding Second Circuit precedent in this district, there is no basis for assuming this factor weighs against transfer. *See id.*

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

As to the local interest in the controversy, the States do not dispute that in cases like this one, courts have generally looked at the location of the administrative decision-making for this factor. *See* Opp'n (Dkt. No. 20) at 17-18; Open. Br. (Dkt. No. 16) at 28 (collecting cases). Thus, because the States do not dispute that the decision-making for the Powers Rule and Preemption Determination occurred in the District of Columbia where the OCC is headquartered and where

its decisionmaker resides, *see* Opp'n (Dkt. No. 20) at 17-18, this factor necessarily weighs in favor of transfer. *See Alec L.*, 2011 WL 8583134, at *5 (local interest in the controversy weighs in favor of transfer to "the District of Columbia . . . where the relevant policies were made, where the policymakers are located, and where the named Defendants reside.").

Nor can the States create local interest in this matter by pointing to the preemption of Oregon state law. *See* Opp'n (Dkt. No. 20) at 17-18. This is simply not like *Las Americas Immigrant Advocacy Center v. Trump*, 475 F. Supp. 3d 1194, 1203 (D. Or. 2020), where the plaintiffs were challenging policies that affected immigrants, immigration courts, foreign nationals, and a nonprofit organization in Oregon. Nor is this like *Decker Coal Co. v. Commonwealth Edison Co.*, 805 F.2d 834, 843 (9th Cir. 1986) where contractual injuries were felt by the plaintiff's coal plant where the chosen district was located. Unlike both the cited cases, this case reaches farther than Oregon by implicating the interest-on-escrow laws of nine other states, and ultimately, the States' assertion that Oregonians have been harmed by the OCC's actions is supported by no allegation in the Complaint. *See* Opp'n (Dkt. No. 20) at 16-18; *Alec L.*, 2011 WL 8583134, at *5 (finding no local interest given two of the five plaintiffs did not reside in the district and lack of any "peculiar localized harm" in California where alleged environmental harm implicated entire country).

Minn-Dak Farmers Cooperative v. Espy, 851 F. Supp. 1423, 1425 (D.N.D. 1994) is likewise immaterial given its blind reliance on Third Circuit precedent that did not contend with the plain language of section 1391(e)(1). *Id.* (citing *Exxon Corp. v. F.T.C.*, 588 F.2d 895 (3d Cir. 1978)). As explained above, cases of this sort are at odds with modern-day Supreme Court precedents and, therefore, carry no persuasive value. *See supra* § II.A. Further, while the States primarily cite this case for its rejection of the District of Columbia as the sole venue for challenges

to federal agency actions as a policy matter, *see* Opp'n (Dkt. No. 20) at 18, the OCC is not insisting that the States can only ever bring suit to challenge their decision-making in the District of Columbia. There is nothing venue-wise that prevents the States from bringing their suits in their respective home states. *See* 28 U.S.C. § 1391(e)(1)(A). But where, as here, the States attempt to bring an ostensibly nationwide challenge involving the intersection of federal law and the different laws of several states, it should be of little surprise that there is no local interest in having the case decided in one state.

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

As to relative court congestion, the States do not dispute that civil cases proceed faster in the District of Columbia. *See* Opp'n (Dkt. No. 20) at 18. And that point is no less salient simply because Defendants also moved to partially stay this case pending Supreme Court proceedings in related cases. Whether this case were to remain here or be transferred to the District of Columbia, a stay pending the resolution of the three pending Supreme Court proceedings will undoubtedly promote judicial economy. *See id.* Thus, assuming this case is not dismissed and a stay is issued, the relevant clock for evaluating court congestion starts when the stay is lifted. Because the time to disposition is comparatively faster in the District of Columbia, that supports transfer. *See Ward v. Lime Fin. Servs., Ltd*, Civ. A. No. 08-0840-AC, 2009 WL 10692461, at *6 (D. Or. Jan. 15, 2009) (granting transfer to court with less court congestion).

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

Critically, the interests of justice weigh heavily in favor of transfer to the District of Columbia. The States claim they are not forum-shopping since there are other forums where this lawsuit could have been brought with caselaw favorable to many of the States. *See* Opp'n (Dkt. No. 20) at 18. But just because the States had several options for forum-shopping does not mean that they did not engage in this disfavored practice. Ultimately, what the States conveniently omit

in their analysis of this factor is that there is also caselaw unfavorable to New York, Connecticut, and Vermont (the Second Circuit's *Cantero II* decision) which held an interest-on-escrow law was preempted by the National Bank Act. *See* Opp'n (Dkt. No. 20) at 18. And there is little doubt that keeping the case in Oregon would enable these Second Circuit States to circumvent *Cantero II*'s holding. *See id.* That is quintessential forum-shopping. *See Ward*, 2009 WL 10692461, at *6.

Indeed, the States provide no coherent explanation for why *Cantero II* would not otherwise bind all the Second Circuit States in their respective jurisdictions. *See* Opp'n (Dkt. No. 20) at 13; *see supra* § I.C. The States insist to this Court that *Cantero II* cannot possibly bind Connecticut and Vermont because the Second Circuit in *Cantero II* had only considered New York's interest-on-escrow law. *See* Opp'n (Dkt. No. 20) at 13. Yet, only a few pages later, they also insist that *Kivett v. Flagstar Bank, FSB*, 154 F.4th 640 (9th Cir. 2025) (which only addressed California's interest-on-escrow law) and *Conti v. Citizens Bank, N.A.*, 157 F.4th 10 (1st Cir. 2025) (which only addressed Rhode Island's interest-on-escrow law), have precedential effect for Oregon, as well as Maine and Massachusetts, respectively. *See* Opp'n (Dkt. No. 20) at 18 ("As Defendants acknowledge, half of the Plaintiff States (Oregon, California, Maine, Massachusetts, Rhode Island) reside in jurisdictions with Circuit precedent upholding state interest-on-escrow laws against National Bank Act preemption challenges, and this District is home to Oregon, which has taken a lead role in prosecuting the litigation."). The States cannot have their cake and eat it too.

Ultimately, it is exactly this kind of gameplay that demonstrates why transfer to the District of Columbia would best serve the interests of justice. *See Stewart Org., Inc. v. Ricoh Corp.*, 487 U.S. 22, 30 (1988) (the interests of justice refer to "those public-interest factors of systemic integrity and fairness."). There is no precedent in the District of Columbia directly addressing National Bank Act preemption of state interest-on-escrow laws. And with a transfer to the District

of Columbia, there is no reason that this case could not remain a single lawsuit with all ten States and the Oregon Attorney General's Office as lead counsel, which the States claim they desire. *See* Opp'n (Dkt. No. 20) at 18. Thus, where a transfer to the District of Columbia could both disallow forum-shopping and achieve the judicial efficiency the States seek, the Court should transfer this matter.

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

Finally, the States continue to erroneously conflate the Powers Rule and Preemption Determination to allege that the OCC exceeded its statutory authority and acted contrary to law in promulgating the Powers Rule. The National Bank Act, including 12 U.S.C. § 371, grants the OCC clear statutory authority to issue the Powers Rule as the OCC explained extensively when it promulgated the Powers Rule to codify and clarify longstanding powers of national banks. *See* Powers Rule, 91 Fed. Reg. at 29340, 29342.

First, the States have no basis for their claim that OCC promulgated the Powers Rule solely for the purpose of preempting their interest-on-escrow laws. *See* Opp'n (Dkt. No. 20) at 20. The States largely base that claim on their own allegations. *See id.* (citing Compl. (Dkt. No. 1) ¶¶ 51, 74, 76-77). And while the Court does generally accept allegations as true on a motion to dismiss, it does not need to do so when the allegations contradict the public record. *See Gemtel Corp. v. Cmty. Redevelopment Agency of City of L.A.*, 23 F.3d 1542, 1544 n.1 (9th Cir. 1994); *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001). As the Preamble to the Powers Rule states, the OCC promulgated the 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. Nothing in the OCC's press release announcing the Powers Rule states otherwise. *See* OCC, OCC Issues Two Final Rules on Preemption of State Interest-on-Escrow Laws (May 15, 2026), https://www.occ.gov/news-issuances/news-releases/2026/nr-occ-2026-37.html.

Second, the States argue that regardless of why the OCC issued the Powers Rule, (1) it has a preemptive effect; (2) therefore, the procedural requirements in Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank") apply to it; and (3) the OCC failed to comply with these requirements. *See* Opp'n (Dkt. No. 20) at 20-21 (citing Compl. (Dkt. No. 1) ¶¶ 15, 77). But the States cite no legal authority for the proposition that Dodd-Frank's procedural requirements apply to any rule that may have a preemptive effect. *See* Opp'n (Dkt. No. 20) at 20-21. And mere legal conclusions are not sufficient to survive a motion to dismiss. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678-79 (2009).

Further, this argument fails to recognize the dispositive legal difference between an OCC "preemption determination" and an OCC regulatory action that has, or may at some future date have, a preemptive effect. As the Supreme Court recognized in *Smiley v. Citibank (S.D.), N.A.*, 517 U.S. 735, 743-44 (1996), there is a distinction between (1) determining the substantive meaning of a federal statute; and (2) deciding whether and to what extent that federal law preempts state law. *See also 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). Dodd-Frank requirements cited by the States apply only to preemption determinations, *see* 12 U.S.C. § 25b(b)(3), (b)(5), which the Powers Rule is not. The States cite nothing in Dodd-Frank suggesting that its requirements apply to an OCC rulemaking beyond a preemption determination involving a state consumer financial law. *See* Opp'n (Dkt. No. 20) at 20-21; Preemption Determination, 91 Fed. Reg. at 29356 n.74. Whether the OCC correctly applied the preemption standard in 12 U.S.C. § 25b or satisfied its procedural requirements is a question for the Court when, and if, it considers the merits of the states' challenges to the Preemption Determination.

Finally, the States argue that the OCC improperly relied on its broad authority under the National Bank Act to promulgate the Powers Rule since more specific statutes like Dodd-Frank and Truth in Lending Act ("TILA") applied. *See* Opp'n (Dkt. No. 20) at 22-23. The States are mistaken. Unlike in *Air Alliance Houston v. EPA*, 906 F.3d 1049, 1060-61 (D.C. Cir. 2018), *Oregon Council for Humanities v. U.S. DOGE Service*, 794 F. Supp. 3d 840, 876 (D. Or. 2025), or *Louisiana Public Service Commission v. FCC*, 476 U.S. 355, 377 (1986), where the agencies had improperly relied on broad statutory authorities for their actions when more specific statutes limited those authorities, neither Dodd-Frank nor TILA curtailed the OCC's authority to issue the Powers Rule under the National Bank Act. *See* Opp'n (Dkt. No. 20) at 22-23.

Dodd-Frank (1) addressed the OCC's authority to issue preemption determinations (a completely different type of action than its authority to issue a powers rule); and (2) required that the agency satisfy certain procedural requirements when doing so. 12 U.S.C. § 25b(b)-(c). The plain text of Dodd-Frank does not purport to circumscribe in any way the OCC's rulemaking authority under the National Bank Act. *See id.* Indeed, as the OCC noted, Congress did the opposite, expressly affirming the agency's other broad interpretive authorities and distinguishing them from its preemption authority. *See id.* § 25b(b)(5).

Similarly, 15 U.S.C. § 1639d of TILA does not address the OCC's rulemaking authority but, instead, sets limited additional requirements related to escrow accounts for certain mortgages. The Powers Rule does not—and could not—override any applicable provision of TILA. Powers Rule, 91 Fed. Reg. at 29345 n.57 (specifically recognizing that "banks' real estate lending operations may be subject to additional requirements under Federal law.").

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

CONCLUSION

For the reasons stated above and those in Defendants' Opening Brief, the Court should dismiss the States' 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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