No. 10-56068

United States Court Of Appeals For The Ninth Circuit

CRYSTALMONIQUE LIGHTFOOT, et al.,

Plaintiffs and Appellants,
vs.
CENDANTMORTGAGE CORPORATION, et al.,
Defendants and Appellees.

Appeal from United States District Court,
Central District of California, Case No. 2:02-cv-06568
Hon. Consuelo B. Marshall, U.S. District Judge

Opposition To Motion to Affirm; Motion To Remand Case

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I.
INTRODUCTION

The import of the Supreme Court's decision in this case is clear and unequivocal: the motion of Fannie Mae and Cendant Mortgage must be denied. Instead, for five reasons, the case must be remanded to state court.

First, Fannie's motion is procedurally improper given the Supreme Court's mandate. The Supreme Court "reversed" the Ninth Circuit's "judgment." It did not "vacate" and remand for further proceedings. A "reversal" on a threshold ground (*i.e.*, a question of whether the court has jurisdiction to reach the substantive law claims) effectively holds that the lower court erred by reaching the merits of the case. *Newdow v. Rio Linda Union School Dist.*, 597 F.3d 1007, 1041 (9th Cir. 2010). Since federal jurisdiction is lacking, the Court should not consider the merits of the case by ruling on the motion; rather, the case should be remanded.

Second, Fannie removed this case on one ground and one ground only - that its sue-and-be-sued clause provides jurisdiction in the federal courts. The Supreme Court unanimously rejected this ground. When Fannie removed this case, it did not rely on or even mention *Ultramar Am. Ltd. v. Dwelle*, 900 F.2d 1412 (9th Cir. 1990), as another possible ground for removal. It is now too late for Fannie to attempt to retroactively base its removal on a ground that it never mentioned in its removal papers. *See O'Halloran v. Univ. of Washington*, 856 F.2d 1375, 1381 (9th Cir. 1988); *Barrow Dev. Co. v. Fulton Ins. Co.*, 418 F.2d 316, 317 (9th Cir. 1969); 14C Wright, Miller & Cooper, Federal Practice and Procedure § 3733 (4th ed.).

Third, Fannie's reliance on *Ultramar* as a ground to justify its removal is misplaced for another reason – *Ultramar* is not good law (and hasn't been since 1998). Indeed, in *Rivet v. Regions Bank of Louisiana*, 522 U.S. 470 (1998), the Supreme Court repudiated *Ultramar* and held that a case may not be removed to federal court on the basis of a federal defense, even if that defense is anticipated in

the plaintiff's complaint. *See Rivet,* 522 U.S. at 478 ("claim preclusion by reason of a prior federal judgment is a defensive plea that provides no basis for removal"). *See also Palkow v CSX Transp., Inc.*, 431 F.3d 543, 551 (6th Cir. 2005) (recognizing that in *Rivet* the Supreme Court repudiated *Ultramar*). *See also California ex rel. Lockyer v. Dynegy, Inc.*, 375 F.3d 831, 838 (9th Cir. 2004)(construing *Rivet* to mean that for removal purposes, the federal issue must be disclosed upon the face of the complaint, unaided by the answer or by the petition for removal, and that a defense is not grounds for removal); 14C Wright, Miller & Cooper, Federal Practice and Procedure § 3722 (4th ed.). Accordingly, Fannie Mae's argument that federal jurisdiction arises from *Ultramar* must be rejected.

Fourth, Fannie forfeited its right to rely on *Ultramar* when it failed to argue to the District Court that *Ultramar* provided federal jurisdiction in its opposition to the motion to remand filed by Crystal Monique Lightfoot and Beverly Hollis-Arrington. Fannie then compounded its initial waiver by failing to argue on appeal in either this Court or the Supreme Court that *Ultramar* provided the necessary federal jurisdiction to support its removal.

Fifth, Fannie relies on how much has happened in the litigation as a reason not to dismiss at this point. But that is just wrong as, had the District Court gotten it right on the motion to remand, nothing would have happened in the District Court, this Court, or the Supreme Court.

Accordingly, the Ninth Circuit should deny Fannie's motion and, instead, remand the case to the District Court with instructions to remand the case back to state court.

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II.
THE SOLE GROUND UPON WHICH FANNIE BASED ITS REMOVAL WAS ITS SUE-AND-BE-SUED CLAUSE; THE SUPREME COURT EXPRESSLY HELD THAT THE CLAUSE DOES NOT PROVIDE FEDERAL JURISDICTION

A. Fannie Removed The Lawsuit Relying Solely On Its Sue-And-Be-Sued Clause; Fannie Did Not Identify, Or Even Mention, In Its Removal That *Ultramar* Was Another Ground For Removal

On July 18, 2002, Lightfoot and Hollis-Arrington, acting *pro se*, sued Fannie in state court alleging only violations of state law. *See* Complaint attached as Exhibit "A" to the Declaration of Andrew H. Friedman.

On August 22, 2002, Fannie removed the case to federal court. The sole ground relied upon by Fannie was its sue-and-be-sued clause. *See* Notice of Removal, attached as Exhibit "B" to Friedman Decl. *See also Lightfoot v Cendant Mortg. Corp.*, 137 S. Ct. 553, 558 (2017)("Fannie Mae removed the case to federal court under 28 U.S.C. § 1441(a), which permits a defendant to remove from state to federal court 'any civil action' over which the federal district courts 'have original jurisdiction.' ***It relied on its sue-and-be-sued clause as the basis for jurisdiction***.")(Emphasis added).

Fannie did not identify, or even mention, in its Notice of Removal that *Ultramar* was another possible ground for the removal. *See* Notice of Removal.

B. Lightfoot and Hollis-Arrington Filed A Motion To Remand; Fannie Opposed The Motion Relying Solely On Its Sue-And-Be-Sued Clause - Fannie Did Not Identify, Or Even Mention, That *Ultramar* Was Another Possible Ground For The Removal

Lightfoot and Hollis-Arrington, acting *pro se*, filed a motion to remand arguing that Fannie's sue-and-be-sued clause did not provide federal jurisdiction. *See* Motion To Remand attached as Exhibit "C" to Friedman Decl.

Fannie opposed the motion to remand arguing solely that "federal jurisdiction

exists in this action by virtue of 12 U.S.C. §l723a, a provision of the Fannie Mae Charter Act that grants Fannie Mae authority 'to sue and be sued, and to complain and to defend, in any court of competent jurisdiction, State or Federal.'" *See* Opposition To Motion To Remand, attached as Exhibit "D" to Friedman Decl.

Fannie did not identify, or even mention, in its Opposition that *Ultramar* was another possible ground for the removal. *Id*.

The District Court denied the motion to remand and, ultimately, dismissed the case.

C. Lightfoot and Hollis-Arrington Filed An Appeal; Fannie Opposed The Appeal Arguing Solely That Its Sue-And-Be-Sued Clause Provides Federal Jurisdiction - Fannie Did Not Identify, Or Even Mention, That *Ultramar* Was Another Possible Ground For The Removal

Lightfoot and Hollis-Arrington appealed, *pro se*, to the Ninth Circuit arguing that the District Court lacked subject matter jurisdiction over their claims.

In opposition, Fannie again reiterated that the case was properly removed to federal court on the sole ground that its sue-and-be-sued clause confers federal jurisdiction. *See* Appellee's Brief, attached as Exhibit "E" to Friedman Decl. Fannie did not identify, or even mention, in its Opposition that *Ultramar* was another possible ground for the removal. *Id*.

Initially, the Ninth Circuit affirmed, in a memorandum disposition, on a ground never raised by Fannie – the *Ultramar* case. *Lightfoot v. Cendant Mortg. Corp.*, 465 Fed.Appx. 668, 669 (9th Cir. 2012).

Lightfoot and Hollis-Arrington, *pro se*, objected to the Ninth Circuit's memorandum disposition on the grounds that: (1) Fannie's removal was based solely on its sue-and-be-sued clause; and (2) the Ninth Circuit's reliance on *Ultramar* was in error as *Ultramar* was not good law having been repudiated by the Supreme Court

in *Rivet*. *See* Petition For Panel Rehearing (pp.12-14), attached as Exhibit "F" to Friedman Decl.

In response, the Ninth Circuit withdrew its memorandum disposition and ordered the parties to "In addition to any other issues the parties address in their briefs, they shall address whether the district court had subject matter jurisdiction on the basis of the federal charter of the Federal National Mortgage Association ("Fannie Mae"), 12 U.S.C. § l723a(a). *See* Order, attached as Exhibit "G" to Friedman Decl.

D. In The Next Round Of Briefing To The Ninth Circuit, Lightfoot and Hollis-Arrington Argued That Removal Was Improper; Fannie Argued That Jurisdiction Was Proper Based Solely Upon Its Sue-And-Be-Sued Clause - Fannie Did Not Identify, Or Even Mention, In Its Opposition That *Ultramar* Was Another Possible Ground For The Removal

Lightfoot and Hollis-Arrington, with the assistance of *pro bono* counsel, filed a new brief arguing that remand was required because the District Court lacked subject matter jurisdiction over their claims as Fannie's sue-and-be-sued clause did not provide jurisdiction. *See* Appellants' Opening Brief (pp. 10-11), attached as Exhibit "H" to Friedman Decl. ("Fannie Mae's removal stemmed entirely from its "sue and be sued" clause and not because some federal question was patent or implicit in Appellants' state court complaint . . . Fannie Mae's charter act does not confer automatic federal subject matter jurisdiction . . . The district court should have remanded the matter back to state court as no basis of federal court jurisdiction exists.").

Lightfoot and Hollis-Arrington also argued that because the Ninth Circuit *sua sponte* withdrew its prior opinion, which held that removal was appropriate under *Ultramar*, *Ultramar* was no longer relevant. *See* Appellants' Opening Brief, p. 7, fn. 1 ("Appellants' removed complaint here does not fit within *Ultramar's* stated

scenario. Ultramar's points, more importantly, are in extreme doubt given *Rivet v. Regions Bank of Louisiana*, 522 U.S. 470 (1998). The panel *sua sponte* withdrew the previous opinion. Accordingly, Appellants believe principles from *Ultramar* are no longer germane to the discussion . . .").

In its Response, Fannie again made only one argument as to why remand was improper – that its charter grants federal district courts with jurisdiction. *See* Fannie's Response Brief, attached as Exhibit "I" to Friedman Decl. ("The district court had subject-matter jurisdiction pursuant to 12 U.S.C. § 1723a(a), which provides that Fannie Mae may be 'sued . . . in any court of competent jurisdiction, State or Federal.'").

Fannie did not identify, or even mention, in its Opposition that *Ultramar* was another possible ground for the removal. *Id.*

Nor did Fannie address the argument of Crystal Monique Lightfoot and Beverly Hollis-Arrington that *Ultramar* was no longer relevant. *Id.*

The Ninth Circuit held that the remand motion was properly denied as the District Court had subject matter jurisdiction over the lawsuit based on the sue-and-be-sued clause in Fannie Mae's charter. *Lightfoot v. Cendant Mortg. Corp.*, 769 F.3d 681, 690 (9th Cir. 2014).

E. In Opposition To The Petition For A Writ Of Certiorari, Fannie Did Not Identify, Or Even Mention, That The Petition Should Be Denied Because *Ultramar* Was Another Possible Ground For The Removal

In their petition to the Supreme Court for a writ of certiorari, Lightfoot and Hollis-Arrington argued that federal jurisdiction was lacking because Fannie's sue-and-be-sued clause – the only basis identified in Fannie's removal papers – did not confer jurisdiction in the federal courts. *See* Petition For A Writ Of Certiorari, attached as Exhibit "J" to the Declaration of Andrew H. Friedman.

In its brief in opposition, Fannie did not argue that the petition should be denied because *Ultramar* was an alternative ground for federal jurisdiction. *See* Opposition to Petition For A Writ Of Certiorari, attached as Exhibit "K" to the Declaration of Andrew H. Friedman. Rather, the sole ground upon which Fannie argued that federal jurisdiction existed was its sue-and-be-sued clause. *Id.*

F. The Supreme Court Unanimously Rejected The Sole Ground For Removal Relied On By Fannie And Expressly Held That Fannie's Charter Does Not Establish Jurisdiction In The Federal Courts

The Supreme Court unanimously rejected the sole ground for removal relied on by Fannie and expressly held that Fannie's charter does not establish jurisdiction in the federal courts. *Lightfoot v. Cendant Mortg. Corp.*, 137 S. Ct. 553, 556 (2017). The Supreme Court then reversed the judgment of the Ninth Circuit. Notably, the Supreme Court did not "vacate" the Ninth Circuit's judgment and remand for further proceedings.

III.
REMOVAL JURISDICTION MUST BE NARROWLY CONSTRUED IN FAVOR OF THE NON-REMOVING PARTY

In *Shamrock Oil Corp. v. Sheets*, 313 U.S. 100, 107–109 (1941), the Supreme Court noted that the legislative history and language of the removal statute shows that Congress intended to narrowly limit removal jurisdiction. The Court reasoned that removal was statutory and not constitutional, and that removal jurisdiction must, therefore, be narrowly construed in favor of the non-removing party to prevent, *inter alia*, encroachment on the right of state courts to decide cases properly before them.

Since *Shamrock*, all of the Circuit Courts of Appeal (including the Ninth Circuit) have uniformly held that there is a "strong presumption" against removal jurisdiction, that the defendant bears the burden of establishing that removal is

proper, and that federal jurisdiction must be rejected if there is any doubt as to the right of removal in the first instance. *See Geographic Expeditions, Inc. v. Estate of Lhotka ex rel. Lhotka,* 599 F.3d 1102, 1107 (9th Cir. 2010)("[R]emoval jurisdiction ousts state-court jurisdiction and must be rejected if there is any doubt as to the right of removal in the first instance. This gives rise to a strong presumption against removal jurisdiction [which] means that the defendant always has the burden of establishing that removal is proper. For these reasons, [w]e strictly construe the removal statute against removal jurisdiction.")(internal citations and quotations omitted); *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992); *Boggs v. Lewis*, 863 F.2d 662, 663 (9th Cir. 1988); 14C Wright & Miller, Federal Practice and Procedure, § 3721.

In keeping with the narrow scope of removal jurisdiction, the courts have held that removal papers may not be amended to add a new or separate basis for removal jurisdiction after the 30-day period in which a defendant has to remove the case. *See O'Halloran v. Univ. of Washington*, 856 F2d 1375, 1381 (9th Cir. 1988)("The petition cannot be amended to add a separate basis for removal jurisdiction after the thirty day period."); *Barrow Dev. Co. v. Fulton Ins. Co.*, 418 F2d 316, 317 (9th Cir. 1969)("[S]ince removal must be effected by a defendant within 30 days after receiving a copy of the complaint (28 U.S.C. § 1446), the removal petition cannot be thereafter amended to add allegations of substance but solely to clarify 'defective' allegations of jurisdiction previously made."); *Wood v. Crane Co.*, 764 F.3d 316, 323 (4th Cir. 2014)("[A]fter thirty days, district courts have discretion to permit amendments that correct allegations already present in the notice of removal. Courts have no discretion to permit amendments furnishing new allegations of a jurisdictional basis."). *See also* 14 Wright & Miller, Federal Practice and Procedure § 3733 (4th ed.) ("In most circumstances, ... defendants may not add completely new grounds for removal or furnish missing allegations ..."); Prac. Guide Fed. Civ. Proc.

Before Trial (The Rutter Group 2017), ¶ 2:3493 ("[T]he consensus is that courts may permit defendant to amend its removal notice only to cure *technical defects* in the jurisdictional allegations, not to add new allegations that were *entirely omitted* from the notice.")(Emphasis in original).

The courts have also held that it is not enough for removal purposes that a federal question may arise during the course of the litigation in connection with a defense. *See Franchise Tax Board of State of Calif. v. Construction Laborers Vacation Trust for Southern Calif.,* 463 U.S. 1, 10 (1983)("For better or worse … a defendant may not remove a case to federal court unless the *plaintiff's* complaint establishes that the case 'arises under' federal law.")(emphasis in original); *Rivet v Regions Bank of Louisiana,* 522 U.S. 470, 475 (1998)("We have long held that [t]he presence or absence of federal-question jurisdiction is governed by the well-pleaded complaint rule, which provides that federal jurisdiction exists only when a federal question is presented on the face of the plaintiff's properly pleaded complaint. A defense is not part of a plaintiff's properly pleaded statement of his or her claim. Thus, a case may not be removed to federal court on the basis of a federal defense, ... even if the defense is anticipated in the plaintiff's complaint . . .")(internal citations and quotations omitted).

This is true even if plaintiff anticipated the defense argument and both parties concede the federal question is the only issue in the case. *See Caterpillar Inc. v Williams,* 482 U.S. 386, 393 (1987)("Thus, it is now settled law that a case may not be removed to federal court on the basis of a federal defense, including the defense of pre-emption, even if the defense is anticipated in the plaintiff's complaint, and even if both parties concede that the federal defense is the only question truly at issue."); *Rivet v Regions Bank of Louisiana*, 522 U.S. 470, 475 (1998).

The reason for strict construction of removal jurisdiction is to prevent waste of judicial resources: *i.e.,* if it turns out there is no "federal question" or "diversity,"

the federal court's judgment would have to be set aside on appeal. *See* Prac. Guide Fed. Civ. Proc. Before Trial (The Rutter Group 2017), ¶ 2:2226.

IV.
THE SUPREME COURT'S DECISION REQUIRES THAT THIS CASE MUST BE REMANDED BACK TO STATE COURT

Fannie's motion to affirm must be denied because it is procedurally improper given the Supreme Court's mandate. The Supreme Court "reversed" the Ninth Circuit's "judgment." It did not "vacate" and remand for further proceedings. Accordingly, the Ninth Circuit must remand the case to the District Court with instructions to remand the case to California state court. This is particularly true as the Supreme Court reversed the Ninth Circuit on a threshold question (a question of whether the court has jurisdiction to reach the substantive law claims) and not on a merits questions (a question of substantive law). *See Newdow v. Rio Linda Union School Dist.*, 597 F.3d 1007, 1041 (9th Cir. 2010)("There is an important difference, overlooked by the district court, between a reversal on a *merits* ground (a question of substantive law) and a reversal on a *threshold* ground (a question whether the court has jurisdiction to reach the substantive law claims). Merits questions may be independent of each other; reversal on one merits ground may leave the decisions reached on other grounds intact. In contrast, when the Supreme Court reverses a lower court's decision on a threshold question, such as prudential standing, it effectively holds the lower court erred by reaching the merits of the case.")(Emphasis in original). *See also* S. Ct. Style G. § 10.5 (2016)("This Court should reverse if it deems the judgment below to be absolutely wrong, but vacate if the judgment is less than absolutely wrong.").

Here, the Supreme Court reversed on a threshold question and held that Fannie's sue-and-be-sued clause – the only ground asserted by Fannie in its removal petition for federal jurisdiction – was lacking. Accordingly, absent federal

jurisdiction, the Ninth Circuit lacks the power to decide a question going to the merits (*i.e.*, whether there are grounds upon which the Court should affirm and the case be dismissed); rather, the Ninth Circuit must immediately remand this action to state court without reaching the question of whether the claims of Lightfoot and Hollis-Arrington are barred by Fannie's purported defenses. *See Morrison v. Allstate Indemnity Co.*, 228 F.3d 1255, 1261 (11th Cir. 2000) (When subject matter jurisdiction is deemed lacking, "the court's sole remaining act is to dismiss the case for lack of jurisdiction").

V.
FANNIE'S FAILURE TO MENTION *ULTRAMAR* IN ITS REMOVAL PAPERS REQUIRES THAT THIS CASE MUST BE REMANDED BACK TO STATE COURT

When Fannie removed this case to federal court it did not rely on or even mention *Ultramar* as another possible ground for removal. This omission is fatal as it is now far too late for Fannie to attempt to retroactively base its removal on a ground that it never mentioned in its removal papers. *See O'Halloran v. Univ. of Washington*, 856 F.2d 1375, 1381 (9th Cir. 1988)("The petition cannot be amended to add a separate basis for removal jurisdiction after the thirty day period."); *Barrow Dev. Co. v Fulton Ins. Co.*, 418 F.2d 316, 317 (9th Cir. 1969)("[S]ince removal must be effected by a defendant within 30 days after receiving a copy of the complaint (28 U.S.C. § 1446), the removal petition cannot be thereafter amended to add allegations of substance but solely to clarify 'defective' allegations of jurisdiction previously made."); 14C Wright & Miller, Federal Practice and Procedure § 3733 (4th ed.)(recognizing that after the 30-day period for removal, "defendants may amend the notice only to set out more specifically the grounds for removal that already have been stated, albeit imperfectly, in the original notice. As the numerous illustrative cases cited in the note below indicate, an amendment of the removal

notice may seek to accomplish any of several objectives: It may correct an imperfect statement of citizenship, state the previously articulated grounds more fully, or clarify the jurisdictional amount. In most circumstances, however, defendants may not add completely new grounds for removal or furnish missing allegations, even if the court rejects the first-proferred basis of removal . . .").

Of course, the courts do not, on their own motion, retain jurisdiction on the basis of a ground that is present but that defendants have not relied on. *See e.g.*, *Gavin v. AT & T Corp.*, 464 F.3d 634 (7th Cir. 2006), *cert. denied*, 549 U.S. 1274, (2007) (vacating denial of remand and dismissal of complaint in consumer fraud case brought as class action that trial court erroneously viewed as brought pursuant to SLUSA and directing remand to state court, concluding that although case was within diversity jurisdiction defendants waived that ground for removal by never raising it). *See also* 14C Wright & Miller, Federal Practice and Procedure § 3733 (4th ed.) ("the court will not, on its own motion, retain jurisdiction on the basis of a ground that is present but that defendants have not relied upon.").

Accordingly, because Fannie did not include in its removal papers any viable ground for federal jurisdiction, federal jurisdiction is lacking and the Court must deny Fannie's motion and remand the case to state court.

VI.
EVEN IF FANNIE HAD MENTIONED *ULTRAMAR* IN ITS REMOVAL PAPERS, THIS CASE MUST STILL BE REMANDED BACK TO STATE COURT BECAUSE *ULTRAMAR* IS NOT GOOD LAW

As explained above, a defendant may not remove a case to federal court on the basis of a federal defense even if the plaintiff anticipated the defense argument. *See Franchise Tax Board of State of Calif. v. Construction Laborers Vacation Trust for Southern Calif.*, 463 US 1, 10 (1983)("For better or worse … a defendant may not remove a case to federal court unless the *plaintiff's* complaint establishes that the

case 'arises under' federal law.")(emphasis in original); *Caterpillar Inc. v. Williams*, 482 U.S. 386, 393 (1987)("Thus, it is now settled law that a case may not be removed to federal court on the basis of a federal defense, including the defense of pre-emption, even if the defense is anticipated in the plaintiff's complaint, and even if both parties concede that the federal defense is the only question truly at issue."); *Rivet v. Regions Bank of Louisiana*, 522 U.S. 470, 475 (1998).

Notwithstanding the clear dictates of the foregoing Supreme Court cases, Fannie argues that federal jurisdiction existed for removal purposes under *Ultramar* (even though Fannie Mae never mentioned *Ultramar* in its removal papers).

By 2002, however, when Fannie removed the case to federal court, *Ultramar* was no longer good law. In *Rivet v Regions Bank of Louisiana*, 522 U.S. 470, 475 (1998), the Supreme Court held generally that a case may not be removed to federal court on the basis of a federal defense:

> We have long held that [t]he presence or absence of federal-question jurisdiction is governed by the well-pleaded complaint rule, which provides that federal jurisdiction exists only when a federal question is presented on the face of the plaintiff's properly pleaded complaint. A defense is not part of a plaintiff's properly pleaded statement of his or her claim. Thus, a case may not be removed to federal court on the basis of a federal defense, ... even if the defense is anticipated in the plaintiff's complaint, and even if both parties admit that the defense is the only question truly at issue in the case.

522 U.S. at 475 (internal citations and quotations omitted).

More specifically, the *Rivet* decision completely foreclosed Fannie's *Ultramar* argument by expressly holding that claim preclusion by reason of a prior federal judgment was a defensive plea that provided no ground for removal of state law claims:

> This case presents the question whether removal may be predicated on a defendant's assertion that a prior federal judgment has disposed of the entire matter and thus bars plaintiffs from later pursuing a state-law-based case. We reaffirm that removal is improper in such a case. In so holding we clarify and confine to its specific context the Court's second footnote in *Federated Department Stores, Inc. v. Moitie*, 452 U.S. 394, 397, n. 2, 101 S.Ct. 2424, 2427, n. 2, 69 L.Ed.2d 103 (1981). The defense of claim preclusion, we emphasize, is properly made in the state proceeding, subject to this Court's ultimate review.

522 U.S. at 475.

Indeed, in *Rivet* the Supreme Court expressly disapproved of *Ultramar* as both Wright & Miller and the Sixth Circuit have recognized:

> As Wright & Miller recognized, Justice Ginsberg effectively delivered the "coup de grace" to the applicability of *Moitie* to support removal when she explicitly noted that the interpretations of *Moitie* in the Second Circuit's decision in *Travelers Indemnity Co. v. Sarkisian*, 794 F.2d 754 (2nd Cir.1986) . . . and the Ninth Circuit's decision in *Ultramar America, Ltd. v. Dwelle*, 900 F.2d 1412 (9th Cir.1990), which represented the two leading interpretations of the *Moitie* footnote, were incorrect. *See* 522 U.S. at 474 n. 2, 118 S.Ct. at 924 n. 2; *see also* 14 Charles Alan Wright, Arthur R. Miller & Edward H. Cooper, Federal Practice and Procedure § 3722, at 443 (3d ed.1998).

Palkow v CSX Transp., Inc., 431 F.3d 543, 551 (6th Cir. 2005).

Accordingly, because *Ultramar* was no longer good law at the time Fannie removed this case to federal court and because removal may not be predicated on a federal defense (including a defendant's assertion that a prior federal judgment has disposed of the entire matter), the Court must deny Fannie's motion and remand the case to state court.

VII.
FANNIE WAIVED ITS RIGHT TO RELY ON *ULTRAMAR* WHEN IT FAILED TO ARGUE THAT *ULTRAMAR* PROVIDED FEDERAL JURISDICTION

Federal appellate courts generally do not consider claims or issues that were not raised in the proceedings below. *See Singleton v. Wulff*, 428 U.S. 106, 120 (1976)("It is the general rule, of course, that a federal appellate court does not consider an issue not passed upon below."); *Baccei v. United States*, 632 F.3d 1140, 1149 (9th Cir. 2011)("we will not reframe an appeal to review what would be in effect a different case than the one decided by the district court").

Here, Fannie waived its right to rely on *Ultramar* when it failed to argue in the District Court that *Ultramar* provided federal jurisdiction supporting its removal. Moreover, that waiver was compounded before the Ninth Circuit when Fannie failed to mention, in its Response Brief (Exhibit "I" to Friedman Declaration) that it believed that *Ultramar* was another possible ground for the removal. It is clear that this was a knowing and intelligent waiver as Fannie failed to address the argument of Lightfoot and Hollis-Arrington that *Ultramar* was no longer relevant to the case. *Id.* Then, further demonstrating that it had waived *Ultramar*, Fannie did not reference *Ultramar* in its brief in opposition to the petition for a writ of certiorari filed by Lightfoot and Hollis-Arrington.

VIII.
NO PUBLIC POLICY SUPPORTS AFFIRMANCE OF THE DISMISSAL OF A CASE WHERE FEDERAL JURISDICTION IS LACKING

Citing *Caterpillar Inc. v. Lewis*, 519 U.S. 61, 75 (1996), Fannie argues that "[w]hen a case has been fully resolved in federal court, 'considerations of finality, efficiency, and economy become overwhelming.'" *See* Motion, p. 1. However, Fannie neglects to mention that *Caterpillar* goes on to hold that, even if a case

proceeds to trial and judgment, that judgment must be vacated if the court lacks jurisdiction:

> Despite a federal trial court's threshold denial of a motion to remand, if, at the end of the day and case, a jurisdictional defect remains uncured, the judgment must be vacated.

519 U.S. at 76-77. *See also Am. Fire & Cas. Co. v Finn*, 341 U.S. 6, 17–18 (1951).

IX.
CONCLUSION: THE MOTION SHOULD BE DENIED AND THE CASE REMANDED BACK TO STATE COURT

Because the District Court never had federal jurisdiction over this matter, this lawsuit must be remanded to state court.

DATED: March 13, 2017

HELMER FRIEDMAN LLP

By: */s/ Andrew H. Friedman*
ANDREW H. FRIEDMAN

Attorneys for Plaintiffs and Appellants
CRYSTAL MONIQUE LIGHTFOOT and
BEVERLY HOLLIS-ARRINGTON

DECLARATION OF ANDREW H. FRIEDMAN

I, Andrew H. Friedman, declare:

1. I am an attorney licensed to practice in California and before this Court and the United States Supreme Court.

2. I am the sole shareholder of Andrew H. Friedman, A Professional Law Corporation, which is a partner in the law firm of Helmer Friedman LLP.

3. Helmer Friedman LLP represents Plaintiffs and Appellants Crystal Monique Lightfoot and Beverly Hollis-Arrington.

4. I served as Counsel of Record in *Lightfoot v. Cendant Mortgage Corp. et. al.* (Case No. 10-56068) and filed the petition for certiorari on behalf of Crystal Monique Lightfoot and Beverly Hollis-Arrington. Subsequently, we brought Orrick into the case as our co-counsel and E. Josh Rosenkranz became Counsel of Record. Thereafter, Orrick and my law firm successfully convinced the U. S. Supreme Court to grant the petition for certiorari that we filed on behalf of Crystal Monique Lightfoot and Beverly Hollis-Arrington. In January 2017, the Supreme Court, in a unanimous decision authored by Justice Sotomayor, reversed the Ninth Circuit and ruled in favor of Crystal Monique Lightfoot and Beverly Hollis-Arrington. *Lightfoot v Cendant Mortg. Corp.*, 137 S. Ct. 553 (2017).

5. I have personal knowledge of the facts stated herein and, if sworn as a witness, I could and would testify competently thereto.

6. I am making this declaration in support of the Opposition of Crystal Monique Lightfoot and Beverly Hollis-Arrington to Fannie Mae's Motion To Affirm.

7. Attached hereto as Exhibit "A" is a true and correct copy of the Complaint that Plaintiffs and Appellants Crystal Monique Lightfoot and Beverly Hollis-Arrington filed in California State Court.

8. Attached hereto as Exhibit "B" is a true and correct copy of the Notice of Removal filed by Defendant and Appellee Fannie Mae.

9. Attached hereto as Exhibit "C" is a true and correct copy of the Motion To Remand filed by Lightfoot and Hollis-Arrington.

10. Attached hereto as Exhibit "D" is a true and correct copy of Fannie Mae's Opposition To Motion To Remand.

11. Attached hereto as Exhibit "E" is a true and correct copy of Fannie Mae's Appellee's Brief filed in opposition to the appeal to the Ninth Circuit filed by Lightfoot and Hollis-Arrington.

12. Attached hereto as Exhibit "F" is a true and correct copy of the Petition For Rehearing filed by Lightfoot and Hollis-Arrington (objecting to the Ninth Circuit's memorandum disposition affirming the District Court on a ground never raised by Fannie – the *Ultramar* case. *Lightfoot v. Cendant Mortg. Corp.*, 465 Fed.Appx. 668, 669 (9th Cir 2012)).

13. Attached hereto as Exhibit "G" is a true and correct copy of the Order of the Court withdrawing its memorandum disposition.

14. Attached hereto as Exhibit "H" is a true and correct copy of Appellants' Opening Brief filed by Lightfoot and Hollis-Arrington.

15. Attached hereto as Exhibit "I" is a true and correct copy of Fannie's Response Brief.

16. Attached hereto as Exhibit "J" is a true and correct copy of the Petition For A Writ Of Certiorari filed on behalf of Lightfoot and Hollis-Arrington by my law firm.

17. Attached hereto as Exhibit "K" is a true and correct copy of Fannie's Opposition to Petition For A Writ Of Certiorari.

18. To the extent that any of the foregoing documents contained proofs of service, exhibits, and appendixes, those documents have not been included in the

attachments.

I declare under penalty of perjury of the laws of the United States of America that the foregoing is true and correct. Executed at Beverly Hills, California on March 13, 2017.

/s/ Andrew H. Friedman
ANDREW H. FRIEDMAN

EXHIBIT “A”

982(a)(9)

SUMMONS
(CITACION JUDICIAL)

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

NOTICE TO DEFENDANT: *(Aviso a Acusado)*

CENDANT MORTGAGE CORPORATION ~~DBA~~
dba PHH

FANNIE MAE, ROBERT O. MATTHEWS: (A MARRIED MAN)
ATTORNEYS EQUITY NATIONAL CORPORATION

YOU ARE BEING SUED BY PLAINTIFF:
(A Ud. le esta demandando)

CRYSTAL MONIQUE LIGHTFOOT
BEVERLY ANN HOLLIS-ARRINGTON

You have 30 CALENDAR DAYS after this summons is served on you to file a typewritten response at this court.

A letter or phone call will not protect you; your typewritten response must be in proper legal form if you want the court to hear your case.

If you do not file your response on time, you may lose the case, and your wages, money and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may call an attorney referral service or a legal aid office (listed in the phone book).

Después de que le entreguen esta citación judicial usted tiene un plazo de 30 DIAS CALENDARIOS para presentar una respuesta escrita a maquina en esta corte.

Una carta o una llamada telefónica no le ofrecerá protección; su respuesta escrita a máquina tiene que cumplir con las formalidades legàles apropiadas si usted quiere que la corte escuche su caso.

Si usted no presenta su respuesta a tiempo, puede perder el caso, y le pueden quitar su salario, su dinero y otras cosas de su propiedad sin aviso adicional por parte de la corte.

Existen otros requisitos legales. Puede que usted quiera llamar a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de referencia de abogados o a una oficina de ayuda legal (vea al directorio telefónico).

CASE NUMBER: *(Numero del Caso)*
LC061596

The name and address of the court is: *(El nombre y dirección de la corte es)*
SUPERIOR COURT OF THE STATE OF CALIFORNIA
NORTH WEST DISTRICT (EAST)
6230 SYLMAR AVE
VAN NUYS, CA 91401

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de telefono del abogado del demandante, o del demandante que no tiene abogado, es)
CRYSTAL LIGHTFOOT - 22912 OAKLAND ST WEST HILLS, CA 91307
BEVERLY HOLLIS-ARRINGTON (818) 999-3561

DATE: *(Fecha)* 7-18-02 JOHN A. CLARKE Clerk, by *(Actuario)* K(illegible) Broom, Deputy *(Delegado)*

[SEAL]

NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant
2. ☐ as the person sued under the fictitious name of *(specify)*
3. ☐ on behalf of *(specify)*
   under: ☐ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
   ☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
   ☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (individual)
   ☐ other
4. ☐ by personal delivery on *(date)*

Form Adopted by Rule 982
Judicial Council of California
982(a)(9) [Rev. January 1, 1984]
Mandatory Form
Martin Dean's Essential Forms™

(See reverse for Proof of Service)

SUMMONS

CCP 412.20

CRYSTAL MONIQUE LIGHTFOOT
BEVERLY ANN HOLLIS-ARRINGTON
22912 HARTLAND STREET
WEST HILLS, CA 91307
TEL: (818) 999-3561
FAX: (818) 316-3359

SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR

THE COUNTY OF LOS ANGELES

VAN NUYS DIVISION

CRYSTAL MONIQUE LIGHTFOOT

BEVERLY ANN HOLLIS-ARRINGTON,

Plaintiff,

Vs.

CENDANT MORTGAGE CORPORATION

DBA PHH MORTGAGE,

FANNIE MAE,

ROBERT O. MATTHEWS: (A MARRIED MAN),

ATTORNEYS EQUITY NATIONAL CORPORATION,

Defendants

LC061596

Case No.:

VERIFIED COMPLAINT FOR:

1.) WRONGFUL FORECLOSURE
2.) VOIDING OF THE TRUSTEE'S DEED.
3.) FRAUD AND DECIET
4.) RACIAL DISCRIMINATION/VIOLATION OF THE UNRUH ACT: CIVIL CODE SECTION 51.5(a)
5.) VIOLATION OF C.C.P. 2924 DUE TO FRAUD/QUITE TITLE AND ADVERSE POSESSION
6.) SALNDER OF TITLE
7.) NEGLEGENT MISREPRESENTATION
8.) CIVIL CONSPIRACY
9.) INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS
10.) ADVERSE POSESSION OF PROPERTY LOCATED AT 7106 MC LAREN AVE, WEST HILLS CALIFORNIA
11.) DECLATORY RELIEF

" DAMAND FOR JURY TRIAL"

JURISDICTION AND VENUE

1. Plaintiff, Crystal Monique Lightfoot and Beverly Ann Hollis-Arrington are, and at all times herein mentioned were, residents of Los Angeles, County, California

2. Defendant Cendant Mortgage Corporation, is, based upon the information and belief of Plaintiffs, a corporation organized under, and existing by virtue of, the laws of an unknown state and is authorized to do business in the state of California.

3. Defendant Fannie Mae, is, based upon the information and belief of Plaintiffs, a private corporation, with a government charter, organized under, and existing by virtue of, the laws of an unknown state and is authorized to do business in the State of California with a corporate office located in Pasadena California.

4. Defendant Attorneys equity National Corporation, is, based upon the information and belief of Plaintiffs, a corporation existing by virtue of, the laws of an unknown state, and is authorized to do business in the State of California, with an office located in Lake Forest, California.

5. Defendant, Robert O. Matthews, is based upon information and belief of Plaintiffs, an individual, who purchased the property located at 7106 McLaren Ave, West Hills, California, from Ed Feldman and Harold Tennen, who were granted the

trustee's deed of the aforementioned property in which Plaintiff claims adverse possession.

6. Plaintiff's seek damages in an amount greater than $75,000.00.

FACTS COMMON TO ALL COUNTS

7. Each and every allegation set forth in each and every averment of this pleading hereby is incorporated by this reference in each and every other averment and allegation of this pleading

8. All acts and/or omissions perpetrated by each defendant in their personal/or official capacity were ratified and approved by all defendants, then and they were acting in the capacity of, agents, servant or employee's of the Corporate defendants with their full consent and ratification. All acts were done with the expressed consent and knowledge of each defendant, and were done with malice, callous, oppressive, reckless and deliberate indifference to the rights of the Plaintiff.

BACKGROUND AND HISTORY

9. On or about July 3, 1999, Plaintiff, Beverly Ann Hollis-Arrington tendered a true and accurate loan application to

defendant, Cendant Mortgage Corporation, to refinance her then home located at 7106 McLaren Ave, West Hills, Ca 91307. On or about August 23, 1999, the aforementioned loan transaction was funded, recorded and closed based on the information truthfully submitted to Cendant Mortgage Corporation, herein referred to as "Cendant".

10. On or about August 29, 1999, Defendant Cendant submitted this Plaintiffs loan application (which was truthfully submitted) to Defendant, Fannie Mae, by way of their desktop underwriting system. Defendant Cendant, altered the truthful information submitted to them, and in which they relied on to fund the original aforementioned loan. The false information was but is not limited to, the loan to values ratio's, the fact that the Plaintiff had truthfully stated that she was self-employed for most of the year, the fact that Plaintiff was a party to a pending civil action, Plaintiff had several derogatory's on her credit report, there was a prior foreclosure action, as shown on the title report obtained by Cendant Mortgage, and the fact that Plaintiff's reserves were over stated.

By altering this essential information, defendant Cendant would generate an automatic "Accept" score from the desktop underwriting system of Fannie Mae, without an actual underwriter reviewing the file. A physical review, in all likelihood, should have discovered the aforementioned deficiencies and resulted in a declination by Fannie Mae. Cendant deliberately altered the

true information submitted to by them, which was truthfully submitted to Cendant, and in which they funded the loan originally with. Defendant, Fannie Mae, purchased the aforementioned loan, which was truthfully submitted to "Cendant", on or about September 1999. The aforementioned information was provided to Plaintiff, Beverly Ann Hollis-Arrington, upon a written inquiry submitted by Beverly Ann Hollis-Arrington to Fannie Mae, in October 2000.

11. In early September 1999, the exact date is unknown to Plaintiff, Crystal Monique Lightfoot, at this time, Defendant Fannie Mae, purchased the aforementioned loan from Defendant Cendant Mortgage Corporation. After this purchase on the secondary Market, by Fannie Mae, Cendant Mortgage remained the "SERVICER" of the aforementioned loan. On or about September 10, 1999, Plaintiff, Beverly Ann Hollis-Arrington, received a payment coupon book from "Servicer", Cendant Mortgage; the payment coupon erroneously reflected a monthly payment amount of $1370.00. Plaintiffs was unaware of any errors in the calculations of they payments that did exist at this time, or the fraudulent activity on the part of any defendant as it related to the funding or selling of the aforementioned real estate loan.

12. On or about October 2, 1999, Plaintiff, Beverly Ann Hollis-Arrington, became ill with heart problems, coupled with enormous legal expenses. Plaintiff, Beverly Ann Hollis-

Arrington's first house payment was due on October 1, 1999. Plaintiffs being unaware of any problems with the loan amount, escrow amount, amount financed and finance charges submitted an application for a forbearance agreement in January 2000. Plaintiff, Beverly Ann Hollis-Arrington was in arrears 3 months at the time she submitted the request to modify her loan.

13. Cendant Mortgage Corporation, who was the "SERVICER" of the loan acknowledged the receipt of plaintiff's request for a forbearance agreement on or about February 20, 2000.. "SERVICER", Cendant Mortgage had performed an end of year review of plaintiff, Beverly Ann Hollis-Arrington's impound account in January 2000, as part of the service agreement and to correct any deficiencies in the amounts due to handle the taxes, hazard insurance, and PMI, if any was due on the account. Defendants, Cendant Mortgage and Fannie Mae were aware at this time that the payment amount had been miscalculated and the payments were short by more than $200.00 monthly. Defendants, Fannie Mae, and Cendant entered into their scheme to deceive Plaintiff, Beverly Ann Hollis-Arrington, at the time they discovered that the payments were short by more than $200.00 a month, In January of 2000.

14. A title search on the property located at 7106 Mc Laren Ave, West Hills, Ca, revealed a substitution of trustee recorded in the office of the Los Angeles County recorder on or about April 24, 2000. A true copy, obtained from the Los Angeles

County recorder is attached hereto as exhibit "B". The substitution recites in relevant part that: Cendant Mortgage Corporation, the undersigned is the present beneficiary under the deed of trust substitutes Attorney Equity National Corporation in Place and stead of original trustee.

15. On April 24, 2000, the date of the recording of the substitution of trustee, in the office of the Los Angeles County recorder, "Fannie Mae" was the beneficiary, as all of "Cendants" interest as the beneficiary had been assigned to Fannie Mae in September, or there about, when the aforementioned loan had been sold by "Cendant Mortgage Corporation", To "Fannie Mae", on the secondary Market. The aforementioned document is false, as Fannie Mae owned this loan at the time of the recording of this document, in the office of the Los Angeles County recorder. Cendant Mortgage was merely the loan "SERVICER" of the aforementioned loan.

15. Between a period of early January 2000 and early May 2000, Plaintiff, Beverly Hollis-Arrington attempted to enter in to a forbearance agreement. "Servicer" Cendant Mortgage Corporation with the approval and ratification of "Fannie Mae" refused to accept any payments from Plaintiff, Beverly Hollis-Arrington, for a five-month period while leading Plaintiff, Beverly Hollis-Arrington, to believe that a forbearance agreement had already been approved.

16. Plaintiff, Beverly Hollis-Arrington was in frequent contact with Kevin Glover, in the loss mitigation department of Cendant Mortgage Corporation. After receiving all documents requested by Mr. Glover, Plaintiff, Beverly Hollis-Arrington, was told by Mr. Glover, that He was approving the forbearance agreement and that he was submitting the package for final approval, with the first forbearance payment due in June of 2000. Mr. Glover stated that a contribution would be required from the Plaintiff as a "good Faith" gesture. Plaintiff relied on these misrepresentations for a period of five months, on May 10, 2000; one day before Plaintiffs home was set for trustee sale, Plaintiff, Beverly Hollis-Arrington received a letter from Cendant Mortgage Corporation, "The Servicer", stating that the investor, "Fannie Mae", had denied the forbearance agreement.

17. In response to the aforementioned actions by defendants Fannie Mae and Cendant Mortgage Corporation, and the subsequent sale of Plaintiff's residence set for May 11, 2000, Plaintiff, Beverly Hollis-Arrington, filed for chapter 13 in the bankruptcy court to stop the May 11, 2000 sale of the aforementioned property. Plaintiff, Beverly Hollis-Arrington, was unaware of the need for defendants Fannie Mae and Cendant Mortgage to foreclose on her home, due to a miscalculation of her house payment continued to negotiate with Cendant to allow her to cure the default on an accelerated schedule in order to avoid bankruptcy, as there were only two items on the bankruptcy

petition. Plaintiff, Beverly Hollis-Arrington, appeared at the 341A meeting in June of 2000, Plaintiff informed the trustee that she was attempting to avoid remaining in bankruptcy by working out an accelerated payment schedule with Cendant Mortgage and Fannie Mae. The chapter 13 Trustee noted the record and stated that she would dismiss with no bar in the event that things did not work out, Plaintiff could file for immediate for protection under chapter 13 again. Plaintiff, Beverly Hollis-Arrington, filed another bankruptcy in July 2000, the IRS filed an erroneous claim for $136,000.00 against plaintiff's July bankruptcy, plaintiff's attempts to resolve the issues with the IRS were unsuccessful; Plaintiff's July Bankruptcy was dismissed with a 180 day bar. Plaintiff, Beverly Hollis-Arrington's, home was again set to trustee sell, for September 18, 2000.

18. Plaintiff, Beverly Hollis-Arrington caused to be recorded in the office of the Los Angeles, county recorder, a quitclaim deed granting title of the aforementioned property, to her daughter, and Plaintiff, Crystal Monique Lightfoot, who at all times resided with Plaintiff, Beverly Hollis-Arrington. On September 11,2000, a subsequent bankruptcy was filed by Plaintiff, Crystal Monique Lightfoot on September 14, 2000.

19. On September 14, 2000 plaintiff and her daughter caused to be transmitted to Attorneys Equity National Corporation, the purported trustee of Cendant Mortgage Corporation, and the "Servicer"Cendant Mortgage, of the aforementioned loan, a copy

of the first page of the bankruptcy petition, stating that A bankruptcy had been filed in the name of Crystal Lightfoot, and informing the "False trustee", Attorney Equity National Corporation, that the property located at 7106 McLaren ave, West Hills, Ca had been transfer to Ms. Lightfoot by way of quitclaim deed. Additionally, the United States bankruptcy court sent notice to Cendant Mortgage Corporation and Attorneys Equity service that a bankruptcy had commenced, showing the trustee's sale number and the loan number, as part of the creditors mailing list, this notification was mailed by the bankruptcy court on September 14, 2000.

19. On September 16, 2000 Fannie Mae and Cendant Mortgage Corporation and the trustee ignored all notifications of a bankruptcy and violated the "automatic Stay", by preceding with the trustee's sale on September 16, 2000, of the residence located at 7106 McLaren Ave, West Hills, Ca.

20. On or about October 22, 2000, an agent from coastland realty appeared at the property of Plaintiff, Crystal Lightfoot, to start eviction procedures, agent Young was notified that if a sale had taken place, it was in violation of the bankruptcy automatic stay, and was therefore "VOID".

21. On or about October 18, 2000, Plaintiff, Beverly Hollis-Arrington filed a lawsuit in the United States District Court, Los Angeles, California against "Cendant Mortgage Corporation".

The action is currently on appeal to the 9th circuit court of appeals.

22. Defendants Cendant Mortgage, Fannie Mae and attorneys National Corporation, conspired together to reset a trustee sale date of February 6, 2001 and file the notice of rescission of the trustee's upon sale on the same day, February 6, 2001, in which a new trustees sale was scheduled to insure that the property would go back to one of the defendants or a bona fide purchaser, in order to insure that Plaintiff, Crystal Lightfoot, could not refinance or reclaim the property located at 7106 McLaren Ave, West Hills, Ca.

23. On or about October 20, 2000, Andrea Jenkins of the Foreclosure department from Cendant Mortgage Corporation telephoned Plaintiff, Beverly Hollis-Arrington to state that she had postponed the trustee sale, which was set for November 11, 2000, to January 15, 2001, to allow Plaintiffs, to refinance the property located at 7106 McLaren Ave, West Hills, Ca. This was false, and Ms. Jenkins knew that she was misrepresenting the intention to postpone the trustee sale set by Cendant Mortgage, "the Servicer" and Fannie Mae "the Assignee of all beneficiary interest" in the loan.

24. "Attorney's Equity Nation Corporation", the falsely alleged trustee, held the trustee's sale on September 16, 2000,

and issued a trustee's deed to Cendant Mortgage Corporation, the trustee's deed was recorded on 8/23/00. Cendant Mortgage claims that they were the beneficiary were false, both Cendant Mortgage as the "Servicer" and Fannie Mae, the "assignee" knew this was false and a misrepresentation of the truth.

A title search conducted at the request of Plaintiff, Crystal Monique Lightfoot revealed, that between a period of September 16, 2000 and February 6, 2001, All defendants, conspired together to hold a trustee sale in violation of the automatic stay, then agreed among themselves (Cendant, Fannie Mae and Attorneys equity Nation Corporation), to withhold the rescission of the trustee's deed upon sale, as required by [Civil code section 1058.5(b)], to restore the condition of the record title and the priority of all liens to the status before the recordation of the trustee's deed.

25. Andrea Jenkins, of Cendant Mortgage Corporation, the "Servicer" and Fannie Mae the "assignee" was aware that the aforementioned loan could not be refinanced, as the title had been transferred by way of the trustee's deed, issued at the trustee sale, held in violation of the bankruptcy automatic stay, on September 16, 2000. Ms. Jenkins, knew that her representation of a postponed trustee sale was false, and that, Plaintiff, Crystal Lightfoot, could not refinance the property which was transferred by

defendants, Cendant Mortgage Corporation, Fannie Mae, And Attorneys Equity National Corporation, who did not restore the condition of the title when they all were informed that the trustee's sale had been invalidated by a pending bankruptcy.

26. Defendants Cendant Mortgage Corporation, and Fannie Mae has entered into an agreement to target "Black" consumers within the State of California, to identify consumers in trouble with their Real Estate loans, Cendant Mortgage or their indirect wholly owned subsidiary steers loans which they know do no meet their credit standards.

27. Cendant Mortgage then manipulates the credit information and makes an "A" paper loan. Immediately after funding the loan that are below credit standards, with delinquencies, prior foreclosure action, no verification of prior payment history and no or little reserves, and a history of being in trouble with making payments on their property. Cendant Mortgage then, submits this information to Fannie Mae by way of the desktop underwriting system. Cendants Mortgage manipulates the information submitted, to Fannie Mae to obtain an automatic "Accept" score.

28. Cendant Mortgage and Fannie Mae then await the "Black" consumer to default on the loan and immediately move in to foreclose.

29. Defendant Attorneys equity National Corporation then with full knowledge of Cendants and Fannie Mae's illegal actions publishes the defaults and trustee's sales. Defendants, Cendant Mortgage, Fannie Mae, and Attorneys Equity National Corporation are all aware of the nefarious plans and illegal acts perpetrated by one another.

30. Defendant Matthews purchased the property located at 7106 McLaren Ave, West Hills, Ca, in which Plaintiff Crystal Lightfoot claims adverse possession. Defendant, Cendant Mortgage, by and through a wholly owned subsidiary, PHH mortgage, also finances Matthews loan, their dba is PHH DBA Cendant Mortgage Corporation.

WRONGFUL FORECLOSURE: AGAINST; CENDANT MORTGAGE; FANNIE MAE AND ATTORNEYS EQUITY NATIONAL CORPORATION

31. Plaintiff, Crystal Lightfoot "ONLY", repeats and repleads paragraph 1 through 31 of the complaint as though fully set forth in this pleading. Plaintiff, Crystal Lightfoot alleges that on June 29, 2001 when the property located at 7106 McLaren Ave, West Hills, Ca was sold by the purported trustee, Attorneys Equity service, Cendant Mortgage who

acted as beneficiary to substitute the trustee on the deed of trust was without power to do so. Cendant Mortgage made the substitution by falsely stating that they were the beneficiaries, when in fact Fannie Mae, was the assignee. Therefore, all acts associated with default and subsequent trustee sale were wrongful, as the trustee was also aware that the actions of the defendants rendered the sale wrongful.

VOIDING OF TRUSTEE'S DEED

32. Plaintiff, Crystal Monique Lightfoot "ONLY" makes the claim to void trustee's deed. Plaintiff, Crystal Monique Lightfoot repeats and repleads paragraph 1 through 31 as though fully set forth in this pleading. Whereas the original deed of trust names First American title insurance company as the trustee, with Cendant Mortgage Corporation as the beneficiary, whereas, the loan of Beverly Ann Hollis-Arrington was sold on the secondary Market on or about September 20, 1999, one month after Cendant Mortgage funded the loan. Fannie Mae, as the assignee, "ONLY" could substitute the beneficiary from First American title insurance corporation. All acts by Attorneys equity

National Corporation are "VOID", as they were appointed by Cendant Mortgage, claiming to be the beneficiary.

FRAUD AND DECEIT: AGAINST CENDANT MORTGAGE; FANNIE MAE; AND ATTORNEYS EQUITY NATIONAL COPRORATION

33. Plaintiff, Crystal Monique Lightfoot and Beverly Ann Hollis-Arrington makes the following allegation for fraud and deceit. Plaintiffs, repleads and repeats paragraphs 1 through 31 as though fully set forth in this pleading.

34. Plaintiff, Crystal Monique Lightfoot and Beverly Ann Hollis-Arrington makes the following allegations of fraud: On April 24, 2000 the filing of the substitution of trustee by defendant Cendant Mortgage Corporation, Cendant Mortgage knew that this document was false, Cendant Mortgage misrepresented their position as "Servicer" to be the beneficiary, Plaintiff, Beverly Ann Hollis-Arrington and Crystal Lightfoot justifiable relied on this misrepresentation and filed one of five bankruptcies attempting to save the property located at 7106 McLaren Ave, West Hills. Defendant Cendant Mortgage knew or should have known that Plaintiff would rely on this information, which resulted in injury to plaintiff's credit and the ultimate loss of their home.

35. Plaintiffs, Crystal Monique Lightfoot and Beverly Ann Hollis-Arrington, repeats and repleads paragraphs 1 through 31 as though fully set forth in this pleading.

36. On or about October 20, 2000, Defendants, Cendant Mortgage, the "Servicer" and Fannie Mae, the "assignee", by and through employee Andrea Jenkins of Cendants foreclosure department, called plaintiff, Beverly Ann Hollis-Arrington, Ms. Jenkins misrepresented that Cendant and Fannie Mae, would postpone a trustee's sale set for November 2000 to allow Plaintiffs to refinance their home.

37. This in fact was a false representation, Ms. Jenkins of Cendant Mortgage, "the servicer" was aware that defendants Cendant Mortgage and Fannie Mae "the Assignee" had conducted a trustee sale by and through the alleged trustee, Attorneys Equity National Corporation.

38. Defendants acted intentionally to induce Plaintiffs to act on the misrepresentation that the property was in the Plaintiff's name, when in fact Ms. Jenkins knew that, Cendant, Fannie Mae and Attorneys equity National Corporation had conspired together to hold a trustee sale in violation of the automatic stay, and when they became aware of the invalidation of the sale by a pending bankruptcy of Plaintiff, Crystal Monique Lightfoot.

39. Defendants, Cendant Mortgage Corporation, Fannie Mae and Attorneys Equity National Corporation, were aware that the

title had not been restored as required by California Civil Code 1058.5(b). Defendant knew that plaintiffs could not obtain refinancing, on property which had been transferred by trustee's deed to Cendant Mortgage Corporation, and recorded on 9/23/00/

40. As a result plaintiffs suffered damages to their credit, with numerous bankruptcies, and the subsequent loss of their home.

RACIAL DISCRIMINATION/ VIOLATION OF THE UNRUH ACT CIV. CODE 51.5(b): AGINST: CENDANT MORTGAGE: FANNIE MAE: ATTORNEYS EQUITY

41. Plaintiffs, Crystal Monique Lightfoot and Beverly Ann Hollis-Arrington, repeats and repleads paragraphs 1 through 31 as though fully set forth in this pleading.

Plaintiffs allege that Cendant Mortgage Corporation, Fannie Mae and Attorneys Equity National Corporation, has formed a conspiracy to discriminate against "BLACK" consumers, seeking refinancing of their real property in the State of California.

42. Plaintiffs learned that they had been injured by way of the discriminatory policies toward "BLACK" applicants in despair with their mortgages, in Late September 2001. The unlawful discriminatory scheme seems to work in this fashion, Defendant Cendant Mortgage takes the initial

application either directly or indirectly through it wholly owned subsidiary and DBA, PHH. Cendant Mortgage then identifies the race of the applicant by way of the application. If the applicant is determined to be "BLACK", and their credit does not meet the standard to loan on "A" paper, Cendant Mortgage then doctors the application to meet the scoring system, and obtain underwriting, despite the fact that the "BLACK" applicant is not credit worthy.

43. Defendant Cendant Mortgage then initially funds the loans of the "BLACK" applicant then turns around within 30 days and sells the loans on the secondary market to Fannie Mae.

44. Defendant Cendant Mortgage alters the application to generate an automatic accept score from Fannie Mae. Fannie Mae is aware of this policy, when the "BLACK" applicant defaults on the loan, which in most cases they do and as we did, Fannie Mae takes the property to resale sometimes at a higher value, and other times to bolster their portfolio.

45. Plaintiffs further alleges that the applications are evaluated differently from "WHITE" applicants in that the "BLACK" applicants are considered for non-creditworthiness as opposed to "WHITE" applicants that are considered for creditworthiness.

46. Plaintiffs allege that "BLACK" applicants are discriminated against as they are expected are set up to fail as opposed to white applicants who these defendant set out to help.

47. Plaintiffs allege that they were treated differently from "WHITES" from the beginning of the loan process to the foreclosure of their home. Plaintiffs are both "BLACK"

VIOLATION OF CIV. CODE 2924 DUE TO FRAUD QUITE TITLE AND ADVERSE POSESSION: AGAINST: CENDANT MORTGAGE CORPORATION: FANNIE MAE: ROBERT MATTHEWS: AND ATTORNEYS EQUITY NATIONAL

48. Plaintiff Crystal Monique Lightfoot "ONLY" makes the allegation for violation of Civil Code 2924 due to fraud. Plaintiff, Crystal Monique Lightfoot, repeats and repleads paragraph 1 through 31 as though fully set forth in this pleading.

49. California Civil code set forth a statutory scheme for foreclosing non-judicially on a property. Plaintiff Crystal Lightfoot alleges that defendants, Cendant Mortgage, Fannie Mae and Attorneys Equity National Corporation violated that scheme through fraud.

50. Plaintiff, Crystal Monique Lightfoot alleges that defendants, Cendant Mortgage Corporation, Fannie Mae And Attorneys Equity service conspired together to misrepresent that Cendant was the beneficiary of the loan of Plaintiffs mother, Beverly Ann Hollis-Arrington, Cendant Mortgage set forth a notarized substution of trustee. Cendant and Fannie Mae knew that this was false.

51. Defendants misrepresented the truthfulness of being the beneficiary with the full knowledge that this was false. Defendants induced Plaintiff's mother to justifiably rely on this misrepresentation, where by she filed 3 bankruptcies in an attempt to save our home. Thereafter, this plaintiff relied on the misrepresentation and attempted to avoid the sale of the family home by bankruptcy and attempted refinancing.

52. Plaintiff, Crystal Monique Lightfoot was injured in her credit and the loss of her home as a result of the misrepresentation.

53. Plaintiff, Crystal Lightfoot alleges that Cendant Mortgage was without power to substitute a new trustee, as they were the "servicer" of the loan at the time the substitution was recorded and without power to substitute a trustee under the deed of trust in which they assigned all beneficial interest to Fannie Mae when the loan was purchased in September 1999. Therefore, Attorneys Equity was not the trustee and had no power to hold the trustee sale of property located at 7106 McLaren Ave. West Hills, Ca

54. Plaintiff, Crystal Monique Lightfoot "ONLY", asserts that she is the person who has title to the property located at 7106 Mclaren ave, West Hills, Ca. Plaintiff asserts that the aforementioned property had been deeded to her by her

mother, Beverly Hollis-Arrington by quite claim deed on September 11, 2000.

55. Plaintiff, Crystal Monique Lightfoot, asserts that Cendant Mortgage falsified the notarized the document filed with the Los Angeles County recorder, stating that "Cendant Mortgage Corporation was the "Beneficiary", when in fact, Cendant Mortgage was the "SERVICER" of the loan, and Fannie Mae was the beneficiary under an assignment which occurred in September 1999.

56. Plaintiff, Crystal Monique Lightfoot, asserts that when the sale of the property located at 7106 Mclaren Ave, West Hills, Ca was transferred to Ed Feldman And Harold Feldman, by a trustees deed On June 29, 2001, Alleged trustee "Attorneys Equity National Corporation" was not the trustee and had no power to transfer ownership from Plaintiff.

57. Plaintiff, Crystal Monique Lightfoot "ONLY", claims an "ADVERSE CLAIM", in the property commonly known as: 7106 McLaren Ave, West Hills, Ca. The legal description of the property in which plaintiff, Crystal Monique Lightfoot claims "ADVERSE CLAIM" to is: Lot 52 of tract 21399, in the city of Los Angeles, as per map recorded in book 601 pages 42 to 45 inclusive of maps, in the office of the county recorder of said county. Except therefrom all oil, gas mineral and hydrocarbon substances lying below a depth of five hundred (500) vertical feet from the surface of said

land but without right of entry to or for said surface, as granted to Morris Kawin, by deed recorded November 26, 1956 in book 52936 page 162, official records, "THE TITLE TOWHICH THIS PLAINTIFF CLAIMS ADVERSE POSESSION.

58. Plaintiff, Crystal Monique Lightfoot, seek a determination as of July 18, 2002 as to her "CLAIM OF ADVERSE POSESSION", title, which is now held by "ROBERT MATTHEWS", a married man.

59. Plaintiff, Crystal Monique Lightfoot "ONLY, alleges that defendant Robert Matthews claim an adverse interest in the aforementioned real property owned by plaintiff, Crystal Monique Lightfoot, that such claim is without right, and that the defendant, Robert Matthews have no estate, title or interest in the property.

SLANDERER OF TITLE: AGAINST: CENDANT MORTGAGE CORPORATION: FANNIE MAE AND ATTORNEYS EQUITY NATIONAL CORPORATION

60. Plaintiff, Crystal Monique Lightfoot, "ONLY" repeats and repleads paragraph 1 through 31 as though fully set forth in this pleading.

61. On September 16, 2000, Defendants, Cendant Mortgage. Corporation, Fannie Mae and Attorneys Equity Corporation caused to be published a trustee's deed granted to "Cendant Mortgage Corporation". The publication was false the

defendants knew it to be false, and made the publication without regard to its truthfulness.

62. Defendants, Cendant Mortgage Corporation, Fannie Mae, and Attorneys Equity National Corporation maliciously published and caused to be published a statement disparaging to the title of this Plaintiff, the statement was reasonable understood to cast doubt upon the existence of this Plaintiffs interest in the property located at: 7106 McLaren Ave, West Hills, Ca 91307, as a result of the malicious publication, this Plaintiff suffered damages in the loss of more than $50,000.00 in equity in the property.

63. Defendants succeeded in casting a legal cloud on the title of the property. Although the sale was "VOIDED" by a pending bankruptcy filed by this Plaintiff, defendants did not rescind the trustees deed for a period of five months, September 16, 2000 through February 6, 2001, therefore the title was not restored to this Plaintiff and there was no way to refinance the property as the title had been vested to "CENDANT MORTGAGE" by the trustee's deed. This action was malicious and calculated to deprive this plaintiff of her interest in the aforementioned property.

64. Defendants recording of the trustees deed dated September 16, 2000 made a false claim to the real property located at 7106 McLaren Ave, West Hills, Ca and was disparaging, as it clouded the title on the property. The document was untrue.

NEGLEGENT MISREPRESENTATION: AGAINST: CENDANT MORTGAGE CORPORATION: FANNIE MAE: ATTORNEYS EQUITY NATIONAL CORPORATION

65. Plaintiffs, Crystal Monique Lightfoot and Beverly Hollis-Arrington, repeats and repleads paragraphs 1-31 as though fully set forth in this pleading.

66. Plaintiff, Crystal Monique Lightfoot, talked with Andrea Jenkins, of Cendant Mortgage foreclosure department on or about October 23, 2000. Plaintiff explained that the property located at 7106 Mclaren had been quite deeded to her by her mother and Plaintiff, Beverly Hollis-Arrington.

67. Ms. Jenkins misrepresented to this plaintiff that she was postponing a trustee sale set for early November 2000, this would give plaintiffs a chance to refinance their home.

68. Ms Jenkins had no reasonable grounds for believing this representation to be true as she was at all times aware that "Attorney's Equity" had held a trustee's sale on the property on September 16, 2000 in violation of the automatic stay, and transferred the title of the property to "CENDANT MORTGAGE CORPORASTION" and ratified by Fannie Mae.

69. Ms. Jenkins, who represented Cendant Mortgage and Fannie Mae, intended these plaintiffs to rely on this misrepresentation and not seek the help necessary to

restore the property and the liens to the status quo, as envisioned by civil code 1058.5(b).

70. Plaintiffs did so justifiably rely on the misrepresentation that the property was in the name of plaintiff, Crystal Lightfoot, and sought refinancing on the property. Plaintiffs were totally unaware that the property had been transferred and remained in the name of Cendant Mortgage Corporation.

71. As a proximate cause of this misrepresentation Plaintiffs were denied all request to refinance the property although they could find no reason for these denials. Plaintiff suffered damages by lost the equity valued at more than $50,000.00 in the property located at 7106 Mclaren Ave, West Hills, Ca

CIVIL CONSPIRACY: AGAINST: CENDANT MORTGAGE COPRORATION: FANNIE MAE: AND ATTORNEYS EQUITY NATIONAL CORPORATION.

72. Plaintiff, Crystal Monique Lightfoot "ONLY", repeat and replead paragraphs 1-31 as though fully set forth in this pleading.

73. Plaintiff Crystal Monique Lightfoot "ONLY" alleges, That defendants, Cendant Mortgage Corporation, Fannie Mae, and Attorney Equity National Corporation formed an operation of conspiracy in furtherance of a common design to injure Plaintiff, Crystal Monique Lightfoot. Plaintiff,

Crystal Monique Lightfoot, further alleges that the defendants, Cendant Mortgage, Fannie Mae, and Attorneys Equity National Corporation owed a legal duty of care in foreclosing on the Plaintiffs property located at 7106 McLaren Ave, West Hills, Ca, that aforementioned defendants breached that duty, and as a result, injured this Plaintiff by loss of income, and loss of equity in the property.

74. Plaintiff Crystal Monique Lightfoot, further alleges that the acts of the conspiracy were unlawful, as to racial discrimination, and fraud, that the aforementioned defendants set out to willfully discriminate against the Plaintiffs as "BLACK" consumers and perpetrate predatory lending on said plaintiffs, by treating the plaintiff, Beverly Hollis-Arrington's loan application differently then "WHITE" applicants, and misusing the foreclosure procedure by way of fraud to purposely publish false statements.

75. Plaintiff, Crystal Monique Lightfoot, further alleges that each of the aforementioned defendants participated directly or indirectly in the conspiracy and approved and or ratified the acts of the other co-conspirators.

INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS: AGAINST: CENDANT MORTGAGE: FANNIE MAE: AND ATTORNEY EQUITY NATIONAL CORPORATION

76. Plaintiffs allege that it was despicable conduct and a willful and conscious disregard for the Plaintiffs rights for defendants, Cendant Mortgage, Fannie Mae and Attorney Equity National Corporation to wrongfully foreclose on the home of the plaintiffs, perpetrate racial discrimination on the plaintiffs, withhold the filing of the rescission of the trustee's deed from a period between September 16, 2000 to February 6, 2000.

77. It was despicable conduct and willful and conscious disregard for plaintiffs rights for the aforementioned defendants to mislead the plaintiffs on or about October 22, 2000 to believe that the property located at 7106 McLaren Ave, West Hills, Ca, was still in the name of Crystal Monique Lightfoot, and prevent these plaintiffs from refinancing the aforementioned property.

78. It was despicable conduct and a willful and conscious disregard for the plaintiffs right for the aforementioned defendants with knowledge that the beneficiary was not "Cendant Mortgage" but "Fannie Mae" to willfully record a false substitution in order in a conspiracy to violate California's civil code section 2924 by way of fraud.

OPPRESSION (OPPRESSIVE)

79. The despicable conduct of the defendant as set forth above, subjected both plaintiffs to cruel and unjust hardship in

conscious disregard of plaintiffs rights for the reasons set forth hereinabove.

80. FRAUD (FRAUDLENT) because defendants, Cendant Mortgage and Fannie Mae intentionally misrepresented to Plaintiffs that the title had not been disturbed and that plaintiffs were free to obtain refinancing on the property located at 7107 McLaren Ave, West Hills, Ca, while knowing full well that they had held a trustee sale in violation of the automatic stay and willfully withheld restoring the title and encumbrances to the status quo immediately upon learning that the sale had been "INVALIDATED", was extreme and outrageous conduct unacceptable in a civilized society in which obtaining a real estate loan is an essential element of home ownership. The conduct was intended (or the conduct was so grossly negligent was to constitute intentional conduct) to cause severe emotional distress and did in fact cause severe emotional distress to plaintiffs.

81. As a proximate result of the conduct of the defendants, and each of them, Plaintiffs, Crystal Monique Lightfoot and Beverly Hollis-Arrington suffered nervousness, crying spells, sleeplessness all requiring medical treatment and resulting in medical expenses, loss of income, loss of equity in property, loss of property, and general damages all according to proof but in an amount clearly in excess of $25,000.00.

82. The defendants conduct constitute malice, oppression, and fraud as defined in the California Civil Code section 3294, and Plaintiffs should recover, in addition to actual damages, damages to make an example of and punish defendants.

PRAYER FOR JUDGMENT

FIRST CAUSE OF ACTION- WRONGFUL FORECLOSURE

1. For voiding of the trustees deed and restoring a valid and marketable title to Plaintiff, Crystal Monique Lightfoot, and damages in excess of $25,000.00

2. SECOND CAUSE OF ACTION- VOIDING OF TRUSTEES DEED.

3. THIRD CAUSE OF ACTION- FRAUD AND DECIET- For damages in am amount according to proof but in excess of $25,000.00

4. RACIAL DISCRIMINATION/ VIOLATION OF THE UNRUH ACT- For treble damages in an amount according to proof but in an amount in excess of $25,000.00

5. VIOLATION OF C.C. 2924 BY FRAUD- "VOIDING' of the trustee's deed, for damages in an amount in excess of $25,000.00; for punitive damages, compensatory damages

6. SALNDER OF TITLE- For damages in an amount according to proof but in excess of $25,000.00, compensatory damages, punitive damages.

7. NEGLEGENT MISREPRESENTATION- For general damages, punitive damages, exemplary damages, in an amount according to proof but in excess of $25,00.00, ACTUAL DAMAGES, exemplary damages, punitive damages, for damages according to proof.

8. CIVIL CONSPIRACY- For general damages in excess of $25,000.00

9. ADVERSE POSESSION- DECLATORY RELIEF IN THE FORM OF RESTORING A MARKETABLE TITLE TO PLAINTIFF, CRYSTAL MONIQUE LIGHTFOOT.

VERIFICATION BY PLAINTIFFS

Plaintiffs, Crystal Monique Lightfoot and Beverly Hollis-Arrington reside in the state of California. Our address is 22912 Hartland Street, West Hills, Ca 91307. We are the Plaintiff in this action and make this affidavit: That we have read the foregoing Verified Complaint and are informed and believe that the matters stated herein are true.

We declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct.

DATED: JULY 18, 2002

BY: Crystal Monique Lightfoot

CRYSTAL MONIQUE LIGHTFOOT

BY: Beverly Hollis-Arrington

BEVERLY HOLLIS-ARRINGTON

" DEMAND FOR JURY TRIAL"

EXHIBIT “B”

SUZANNE M. HANKINS (State Bar No. 157837)
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Attorneys for Defendant
FANNIE MAE

11:43 am

FILED
CLERK, U.S. DISTRICT COURT
AUG 22 2002
CENTRAL DISTRICT OF CALIFORNIA
BY DEPUTY

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

RSWL (RNBx)

CRYSTAL MONIQUE LIGHTFOOT, BEVERLY ANN HOLLIS-ARRINGTON,

Plaintiffs,

vs.

CENDANT MORTGAGE CORPORATION DBA PHH MORTGAGE, FANNIE MAE, ROBERT O. MATTHEWS: (A MARRIED MAN), ATTORNEYS EQUITY NATIONAL CORPORATION,

Defendants.

Case No. 02-6568

NOTICE OF REMOVAL

ENTERED ON ICMS
AUG 26 2002
CV

TO THE CLERK OF THE ABOVE-ENTITLED COURT:

PLEASE TAKE NOTICE that, pursuant to 28 U.S.C. §§1441 and 1446, Fannie Mae, a congressionally chartered federal instrumentality of the United States, hereby removes the case of Lightfoot, et al. v. Cendant Mortgage Corporation, etc., et al., Case No. LC061596, pending in the Superior Court of California, County of

ORIGINAL

Los Angeles, Northwest Judicial District, to the United States District Court for the Central District of California; and in support thereof states as follows:

1. Fannie Mae is a defendant in the action styled Lightfoot, et al. v. Cendant Mortgage Corporation, etc., et al., Case No. LC061596, pending in the Superior Court of California, County of Los Angeles, Northwest Judicial District. Fannie Mae is a congressionally chartered federal corporation which was established to carry out vital public policies prescribed by statute including creating a secondary market for residential mortgage financing, stimulating the flow of private capital into housing, and improving the affordability of home ownership. *See* 12 U.S.C. §1716.

2. Fannie Mae was first served with the summons and complaint on July 24, 2002. A copy of the summons and complaint are attached hereto as Exhibit A.

3. The time within which Fannie Mae is required by laws of the United States, 28 U.S.C. §1446(b), to file this notice of removal has not yet expired.

4. As set out in paragraph 6 below, this Court has subject matter jurisdiction over this action because Congress conferred party-based federal jurisdiction in Fannie Mae's federal charter.

5. Defendant, Cendant Mortgage Corporation, consents to removal, and joins in this Notice of Removal. To the best of Fannie Mae's knowledge, the other defendants in the action have not been served and have not entered an appearance in the state court action.

Federal Jurisdiction Conferred by Fannie Mae's Charter

6. Federal subject matter jurisdiction exists in this action by virtue of 12 U.S.C. §1723a, a provision of the Fannie Mae Charter Act that grants Fannie Mae authority "to sue and be sued, and to complain and defend, in any court of competent jurisdiction, State or Federal." *See American National Red Cross v. S.G. & A.E.*, 505 U.S. 247, 248 (1992) (holding "sue and be sued" provision in charter act of

505 U.S. 247, 248 (1992) (holding "sue and be sued" provision in charter act of federally chartered corporation that expressly mentions federal courts to confer original federal jurisdiction over all cases to which the federally chartered corporation is a party with the consequence that the organization is hereby authorized the removal from state to federal court of any state-law action it is defending.").

7. Fannie Mae reserves the right to submit evidence supporting this Notice of Removal should Plaintiffs move to remand.

8. By virtue of this removal petition, Fannie Mae does not waive its right to assert any claims or other motions, including Rule 12 motions permitted by the Federal Rules of Civil Procedure.

9. Fannie Mae desires to remove this action to this Court and submits this Notice of Removal in accordance with 28 U.S.C. §1446(a) along with the exhibits hereto.

10. This Notice of Removal is being filed within thirty (30) days after receipt by Fannie Mae, by service or otherwise, of a copy of the initial pleading setting forth the claims for relief in this action and is, therefore, timely filed pursuant to 28 U.S.C. §1446(b).

11. Pursuant to 28 U.S.C. §1446(d), Fannie Mae shall give written notice of the filing of this notice of removal to all adverse parties and a copy of this notice is also being filed with the Clerk of the State Court in which this case was originally filed.

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12. Fannie Mae accordingly prays that this Court take jurisdiction of this action to its conclusion and to final judgment to the exclusion of any further proceedings in the State court in accordance with law.

DATED: August 20, 2002

Respectfully submitted,

SEVERSON & WERSON
A Professional Corporation

By: _____
Suzanne M. Hankins

Attorneys for Defendant
FANNIE MAE

EXHIBIT “C”

CRYSTAL MONIQUE LIGHTFOOT
BEVERLY ANN HOLLIS-ARRINGTON
22912 HARTLAND STREET
WEST HILLS, CA 91307
TEL: (818) 999-3561
FAX: (818) 316-3359

2002 AUG 26 PM 1:50

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

CRYSTAL MONIQUE LIGHTFOOT, BEVERLY ANN HOLLIS-ARRINGTON, Plaintiff, vs. CENDANT MORTGAGE CORPORATION DBA PHH MORTGAGE, FANNIE MAE, ROBERT O. MATTHEWS, ATTORNEYS EQUITY NATIONAL CORPORATION, Defendant	Case No.: CV-02-6568 RSWL (RNBx) **EX PARTE APPLICATION TO REMAND CASE BACK TO THE SUPERIOR COURT: THE OBJECTION TO REMOVAL BY BOTH PLAINTIFFS: THE DECLARATIONS OF: CRYSTAL MONIQUE LIGHTFOOT: AND BEVERLY HOLLIS-ARRINGTON IN SUPPORT THEREOF; IN THE ALTERNATIVE; IF REMAND IS DENIED A REQUEST TO TAKE INTERLOCUTORY APPEAL FOR GOOD CAUSE SHOWN.**

NOW COMES PLAINTIFFS, CRYSTAL MONIQUE LIGHTFOOT AND BEVERLY HOLLIS-ARRINGTON, IN PRO SE AND WITHOUT THE AID OF COUNSEL, TO FILE THIS EX PARTE MOTION TO REMAND THE CASE IDENTIFIED IN THE SUPERIOR COURT AS LC061596.

On the evening of August 22, 2002, Plaintiffs received a copy of the notice to remove, from Counsel for Fannie Mae and Cendant Mortgage Corporation. The pleading did not contain a

case number from the District Court. Plaintiffs notified all Defendant by faxing them notification that this ex parte application would be filed in this office on Friday 8/23/02. On Friday 8/23/02, plaintiffs appeared at the Pro Se office to file an ex parte motion to "REMAND". The clerk found no filing in the District court of the "UNVERIFIED" petition to "REMOVE".

On 8/24/02,Plaintiffs received a joinder with the case number CV-02-6568, although the clerk can find no recorded filing, I refaxed a new notice On 08/25/02 to all defendants.

INTRODUCTION

On July 18, 2002, Plaintiffs, Lightfoot and Arrington file the case herewith discussed in the Superior Court, in the Van Nuys Superior Court. The causes of action are "ALL" State causes of action, there is not a "DIVERSITY of CITIZENSHIP" question and there are "NO" government defendants. Jurisdiction "CLEARLY" lies in the State Court.

All Defendant, were properly served and the responsive pleading of Attorney's Equity Corporation was due on 08/22/02, Cendant Mortgage Corporation responsive pleading is due 08/23/02, Fannie Mae's responsive pleading is due on 08/24/02.

FANNIE MAE'S FEDERAL CHARTER DOES NOT CONFER AUTOMATIC FEDERAL JURISDICTION WITHOUT A FEDERAL QUESTION OR A CLAIM OF DIVERSITY FROM THE PLAINTIFFS

Fannie Mae has, with "Malice" and forethought, removed this matter from the State Court sighting, USCS title 28 section 1441 as their authority to remove, under their federal charter. However, Fannie Mae is also governed by 28 U S C S, section 1349, which reads in relevant part:

The district courts shall not have jurisdiction of any civil action by or against any corporation upon the ground that it was incorporated by or under an Act of Congress, unless the United States is the Owner of more than one-half of its capital stock.

"FANNIE MAE" is a private, shareholder owned company. Fannie Mae was created by Congress in 1938 to bolster the housing industry during the Depression. At that time Fannie Mae was part of the Federal Housing Administration (FHA) and authorized to buy only FHA-insured loans to replenish lender's supply of money.

In 1968, Fannie Mae became a private company operating with private capital on a self-sustaining basis. (See exhibit "A") Fannie Mae cannot erroneously hold itself out as an incorporated agency "OWNED" by the United States Government.

USCS 28 SECTION 1441(a) REQUIRES A "VERIFIED PETITION"

USCS 28 section 1441(a) requires "FANNIE MAE" to "Verify" their petition, consistent with Rule 11 of the Federal Rules of

Civil Procedures. Petition has to conform to requirements of law. Sewing Machine Cos. (1874) 85 US 553, 21 L Ed 914

ATTORNEYS EQUITY CANNOT JOIN IN THIS MATTER AS THRIR THIRTY DAY HAS EXPIRED FOR THE PURPOSE OF REMOVAL

As of 8/26/02, Plaintiffs have no creditable evidence that this action has been filed with the District Court, however, as of 8/22/02, Attorneys Equity Nation Corporation's thirty days were up. If this "UNVERIFIED PETITION" is just being filed on 08-26/02, Fannie Mae's time has expired to file the "VERIFIED PETITION"

THE IMPROPER AND "BAD FAITH" REMOVAL OF THIS CASE FROM STATE COURT BY FANNIE MAE AND CENDANT MORTGAGE AND THE VIOLATION OF PLAINTIFFS CONSTITUTIONAL AND CIVIL RIGHTS

In general, under 28 USCS section 1441(a), actions may properly be removed from State to federal court only if Federal District Court would have original jurisdiction over claim in suit. Jefferson County v Acker (1999, US) 144 L Ed 408, 119 S Ct

2069, 99 CDOS 4794, 99 Daily Journal DAR 6179,1999 Colo J C A R 3766, reh den (1999, US) 144 L Ed 2d 826, 120 S Ct 23.

Here, there is nothing that vest jurisdiction in the federal Court. The only possible weak link is that "Fannie Mae" A private Corporation with a federal charter, which trades on the NYSE, is involved. There is "NO" federal question, "NO" diversity issues, and "NO" government employees. In enacting 28 USCS section 1441(a) Congress intended to limit, not extend removability. Wilkins v Renault Southwest, Inc. (1964, ND Tex) 227 F Supp 647

Removal statutes are to be strictly construed in light of congressional purpose generally to restrict jurisdiction of federal courts on removal. Rivera v Federacion de Musicos de Puerto Rico, Inc. (1974, DC Puerto Rico) 369 F Supp 1169, 85 BNA LRRM 2509, 73 CCH LC P 14387.

DEFENDANT ACTIONS ARE SENISTER IN NATURE AND ATTEMPTS TO MAKE A FURTHER MOCKERY OF THE JUDICIAL SYSTEM BY ATTEMPTING TO STEER THIS CASE TO A COURT THAT THEY CONSIDER FAVORABLE TO THEM

Defendant have removed in "BAD FAITH" this case from State Court without following any of the plain language if title 28 section 1441. Plaintiff, Beverly Ann Hollis-Arrington would state for the record that she is currently involved in two appeals, which have been disposed of favorably to these

defendant by Judge Marshall. Plaintiff, Beverly Arrington, states for the record that one issue which will be raised on appeal, consist in part of the ruling by Judge Marshall in "NON-RELATED" case number CV-00-11125CBM. In the courts ruling to set aside the default of Cendant Mortgage who, was represented then and now by attorney, Suzanne Hankins, the court completely "IGNORED" the docketed entries and the file, opting instead to adopt an erroneous position taken by Ms. Hankins. This represents only a small sampling of what Plaintiff, Beverly Arrington, will allege on appeal as prejudicial and what appears to be a deliberate and well thought out attempt to violate her constitutional civil and personal rights, of Plaintiff Beverly Hollis-Arrington.

THIS MATTER SHOULD BE REMANDED IMMEDIATELY, BACK TO THE STATE COURT TO AVOID ANY FURTHER PREJUDICE TO BOTH PLAINTIFFS.

Plaintiffs and both of them, request that this matter be returned to State court immediately, in light of the fact that there is "NO FEDERAL JURISDICTION". The court has a duty to inquire into jurisdiction at all stages of case whether parties raised question or not. Rosenbaum v Bauer (1887) 120 US 450, 30 L Ed 743, 7 S Ct 633;American United Life Ins. Co. (1941, DC NJ)

40 F Supp 1; Asbury v New York Life Ins. Co. (1942, DC Ky) 45 F Supp 513; Bullock v United States (1947, DC NJ) 72 F Supp 445.

DEFENDANT HAVE FILE THIS "BAD FAITH" REMOVAL IN AN ATTEMPT TO STEAR THE JUDICIAL PROCESS, TO A COURT WHICH APPEARS TO FAVORABLE TO THEM, IN VIOLATION TO BOTH PLAINTIFFS CONSTITUTIONAL GUARANTIES OF A RIGHT TO A FAIR SUBMISSION, DUE PROCESS AND EQUAL PROTECTION UNDER THE LAW.

IN THE ALTERNATIVE; SHOULD THIS MOTION TO REMAND BE DENIED, PLAINTIFFS REQUEST PERMISSION OF THE COURT TO TAKE IMMEDIATE INTERLOCUTORY APPEAL IN THIS MATTER.

Plaintiffs, Crystal Lightfoot and Beverly Hollis-Arrington, request that if this motion to remand this matter back to the Superior Court be denied, the Court allows the taking of an immediate appeal.

Assuming from Defendants filing of a related case statement, their goal is to manipulate this case so that it will be returned to Judge Marshall, as Judge Marshall is aware, there are two appeals pending in the 9th circuit court of appeals for the cases claimed as related in the name of Plaintiff, Beverly Ann Hollis-Arrington. Plaintiff, Arrington has asked the 9th circuit to shorten the briefing schedule, in case number CV-01-5658 for good cause shown with this in

mind and in the interest of "JUSTICE", Plaintiffs and both of them seek permission for appeal of the interlocutory order, so that this appeal may be consolidated with the current appeals pending. Plaintiff Arrington has been advised by the 9th circuit court of appeals, that should this request be denied with this brief, she may move for permission of the 9th circuit to hear the appeal of the remand order. Plaintiffs stress the tremendous expense incurred in their attempts to achieve "JUSTICE" in these matters, we are not a multi-billion dollar "CORPORATION", such as Fannie Mae, Nor are we a multi-million dollar "CORPORATION" such as Cendant, however, we are determined that we will have a fair submission at whatever the monetary cost.

Respectfully submitted,

DATED: August 22, 2002

BY: Crystal Lightfoot

CRYSTAL MONIQUE LIGHTFOOT

BY: Beverly Hollis-Arrington

BEVERLY HOLLIS-ARRINGTON

EXHIBIT “D”

SUZANNE M. HANKINS (State Bar No. 157837)
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Attorneys for Defendant
FANNIE MAE

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

CRYSTAL MONIQUE LIGHTFOOT, BEVERLY ANN HOLLIS-ARRINGTON,

Plaintiffs,

vs.

CENDANT MORTGAGE CORPORATION DBA PHH MORTGAGE, FANNIE MAE, ROBERT O. MATTHEWS: (A MARRIED MAN), ATTORNEYS EQUITY NATIONAL CORPORATION,

Defendants.

Case No. CV02-6568 RSWL (RNBx)

OPPOSITION OF FANNIE MAE TO PLAINTIFFS' EX PARTE APPLICATION TO REMAND TO STATE COURT

DATE: None
TIME:
CTRM: 21, Fifth Floor

Defendant Fannie Mae submits the following Memorandum of Points and Authorities in opposition to Beverly Ann Hollis Arrington and Crystal Monique Lightfoot's (collectively "Plaintiffs") ex parte application to remand.

I. INTRODUCTION

Fannie Mae removed this action to federal court under the authority of 28 U.S.C. §1441(a), which provides that "[a]ny civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending." 28 U.S.C. § 1441(a).

As noted in its removal petition and demonstrated below, federal jurisdiction exists in this action by virtue of 12 U.S.C. §1723a, a provision of the Fannie Mae Charter Act that grants Fannie Mae authority "to sue and be sued, and to complain and to defend, in any court of competent jurisdiction, State or Federal."

Plaintiffs misconstrue the jurisdictional basis for federal court jurisdiction in this action and completely fail to address the independent Congressional grant of federal court jurisdiction upon which Fannie Mae relies.

II. CONGRESS HAS CONFERRED A GRANT OF ORIGINAL FEDERAL COURT JURISDICTION AS TO FANNIE MAE

Plaintiffs' motion for remand contends that no federal court jurisdiction exists because neither diversity nor a federal question is at issue. Certainly there is no diversity jurisdiction. Plaintiffs presumably rely on 28 U.S.C. § 1331 in determining that no federal question jurisdiction exists. (See Plaintiffs' remand motion at page 5, lines 6 - 7).

Plaintiffs reliance on the fact that their complaint contains only state law causes of action is misplaced. Fannie Mae's claim of federal court jurisdiction is based upon its federal charter.[1] As in *American National Red Cross v. S.G. and*

[1] "Although the language of § 1331 parallels that of the 'arising under' clause of Article III, this Court never has held that statutory 'arising under' jurisdiction is identical to Article III 'arising under' jurisdiction." *Verlinden B.V. v. Central Bank of Nigeria, supra,* 461 U.S. at 450. "[T]he many limitations which have been placed on jurisdiction under § 1331 are not limitations on the

A.E., "we can make short work of respondents' argument [here Plaintiffs' argument] that the charter's conferral of federal jurisdiction is nevertheless subject to the requirements of the 'well-pleaded complaint' rule (that the federal question must appear on the face of a well-pleaded complaint) limiting the removal of cases from state to federal court." "Respondents [Plaintiffs herein] erroneously invoke that rule outside the realm of statutory 'arising under' jurisdiction, *i.e.*, jurisdiction based on 28 U.S.C. § 1331, to jurisdiction based on a separate and independent jurisdictional grant, in this case, the Red Cross Charter's 'sue and be sued' provision. The 'well-pleaded complaint' rule applies only to statutory 'arising under' cases." *American National Red Cross v. S.G. and A.E.*, 505 U.S. 247, 253 (1992). Thus, it is immaterial to Fannie Mae's separate and independent grant of federal jurisdiction that Plaintiffs' complaint alleges only state law causes of action.

Fannie Mae is a congressionally chartered federal instrumentality which was established to carry out vital public policies prescribed by statute, including creating a secondary market for residential mortgage financing, stimulating the flow of private capital into housing, and improving the affordability of home ownership. See 12 U.S.C. § 1716. Federal jurisdiction exists over actions brought by or against federally-chartered corporations under one of three circumstances: (1) the United States owns more than half of the corporation's capital stock (28 U.S.C. §1349); or (2) the corporation is chartered under a statute that expressly grants federal jurisdiction; or (3) the corporation's charter contains a "sue and be sued" clause that specifically mentions federal courts (*American National Red Cross v. S.G. and A.E.*, 505 U.S. 247, 248). See Schwarzer, Tashima & Wagstaffe, *Cal. Prac. Guide: Fed. Civ. Pro. Before Trial*, § 2:89.5 (The Rutter Group 2002). Absent significant

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constitutional power of Congress to confer jurisdiction on the federal courts." *Id.* citing *Romero v. International Terminal Operating Co.*, 358 U.S. 354, 379, n. 51 (1959). " . . . Article III 'arising under' jurisdiction is broader than federal question jurisdiction under § 1331 . . . ." *Id.*

government ownership or an express jurisdictional grant, the jurisdictional issue hinges on the wording of the federal charter. Here Fannie Mae relies on the specific wording of its Congressional charter.

Under current Supreme Court jurisprudence, as illustrated by *American National Red Cross*, if Congress explicitly refers to federal courts when granting an entity the power to sue and be sued, the sue-and-be-sued clause confers jurisdiction on the federal courts in all suits by or against that entity. *American National Red Cross v. S.G. and A.E., supra,* 505 U.S. at 252. In short, since Fannie Mae's charter explicitly refers to federal courts, all cases brought by or against Fannie Mae are subject to original federal jurisdiction.

The statutory "sue and be sued" clause of a federally chartered corporation, on its face, provides such a corporation with a general capacity to sue. In addition, the "sue and be sued" provision extends beyond a grant of general corporate capacity to sue, and confers original jurisdiction on the federal court over all cases to which the corporation is a party, as long as the provision specifically mentions federal courts. This test for original jurisdiction emerges from *American National Red Cross*, a 1992 United States Supreme Court case interpreting the statutory "sue and be sued" clause of a federally chartered corporation.

Plaintiffs in *American National Red Cross* alleged that it supplied them with contaminated blood and brought suit in state court. *American National Red Cross v. S.G. and A.E., supra*, 505 U.S. at 249. The Red Cross removed the case to federal court, claiming that both diversity of citizenship and the language of its "sue and be sued" provision provided federal jurisdiction. *Id.* While the district court upheld jurisdiction based on the language in the Red Cross's congressional charter, the First Circuit reversed, holding that neither case law nor the legislative history of the Red Cross Charter supported a finding of an independent grant of federal jurisdiction. *Id.*

With the Eighth Circuit reaching the exact opposite conclusion as to the Red Cross Charter, the Supreme Court granted certiorari to resolve the circuit split. *Id.* at 250.

The Supreme Court was faced with determining whether 36 U.S.C. §2, which provides that the Red Cross has the right "to sue and be sued in courts of law and equity, State or Federal," vests federal courts with original jurisdiction over actions to which the Red Cross is a party. *American National Red Cross v. S.G. and A.E.*, *supra*, 505 U.S. at 249. The U.S. Supreme Court answered this question in the affirmative, holding that because the "sue and be sued" provision of the Red Cross's charter contained an explicit reference to federal courts, the charter vested the federal courts with original jurisdiction for all cases in which the Red Cross is a party. *Id.*

In reaching its holding in *American National Red Cross*, the Supreme Court relied on its reasoning in previous cases involving "sue and be sued" provisions, including *D'Oench, Duhme & Co. v. Federal Deposit Insurance Corp.*, 315 U.S. 447 (1942) (FDIC's charter, which authorizes it 'to sue or be sued in any court of law or equity, State or Federal,' confers original jurisdiction); *Osborn v. Bank of the United States,* 22 U.S. 738 (1824) (national bank's charter, which authorizes it 'to sue and be sued . . . in all state courts having competent jurisdiction, and in any circuit court of the United States,' confers original jurisdiction). *Id.* at 253 - 254. The Supreme Court thus held that "[t]hese cases support the rule that a congressional charter's 'sue and be sued' provision may be read to confer federal court jurisdiction if, but only if, it specifically mentions the federal courts." *Id.* at 255.

The *American National Red Cross* decision provides a bright-line test, conferring federal jurisdiction on those organizations whose charters contain specific mention of federal courts and denying the grant of original federal jurisdiction to those whose charters fail to mention federal courts. It is not enough for federal jurisdiction merely that a federally chartered corporation is empowered to "sue and

be sued." Only a charter provision that expressly mentions federal courts allows both original and removal jurisdiction.

Since the Supreme Court's decision in *American National Red Cross*, several federal courts have adopted the bright-line test set out for conferring original jurisdiction over cases involving federally-chartered corporations. See *A & S Council Oil Co. v. Saiki*, 799 F.Supp. 1221 (D.D.C. 1992) (reference in Small Business Administration's Charter to federal courts sufficient to constitute independent grant of jurisdiction); *55 Motor Avenue Co. v. Liberty Industrial Finishing Corp.*, 885 F.Supp. 410 (E.D.N.Y. 1994) ('sue and be sued' clause in the Reconstruction Finance Corporation Act created subject matter jurisdiction over claims arising from acts of the Reconstruction Finance Corporation); *Bartels v. Alabama Commercial College, Inc.*, 54 F.3d 702 (11th Cir. 1995) ('sue and be sued clause' which specifically refers to federal district courts constitutes an independent grant of jurisdiction over a federal agency). Consistent with *American National Red Cross* and its progeny, this Court should hold that Fannie Mae's charter (which contains a 'sue and be sued' provision that expressly references federal courts) confers original federal court jurisdiction over this action. (See *CC. Port, Ltd. v. Davis-Penn Mortgage Company*, 61 F.3d 288, 289 (5th Cir. 1995), where Fannie Mae successfully removed the case to the district court based upon its federal charter under 12 U.S.C. § 1723a(a) and Article III of the Constitution of the United States).

The District Court's retention of this case is mandatory. "If there is no basis for dismissal on abstention grounds, '[f]ederal courts have a 'virtually unflagging obligation' to exercise the jurisdiction conferred upon them by the coordinate branches of government and duly invoked by litigants.'" *Brockman v. Merabank*, 40 F.3d 1013, 1017 (9th Cir. 1994) citing *United States v. Rubenstein*, 971 D.2d 288, 293 (9th Cir. 1992).

III. CONCLUSION

Based upon the foregoing, Fannie Mae respectfully requests that this Court retain jurisdiction over the instant action.

DATED: August 28, 2002

SEVERSON & WERSON
A Professional Corporation

By: _____
Suzanne M. Hankins

Attorneys for Defendant
FANNIE MAE

EXHIBIT “E”

Nos. 10-56068

United States Court of Appeals For The Ninth Circuit

CRYSTAL LIGHTFOOT & BEVERLY HOLLIS-ARRINGTON,
Plaintiffs-Appellants,

vs.

FANNIE MAE, CENDANT MORTGAGE CORP., et al.,
Defendants-Appellees.

Appellees' Brief

Appeal from a Judgment of
United States District Court for the Central District of California
(No. CV-02-06568 CBM (AJWx)),

The Honorable Consuelo B. Marshall, United States District Judge

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CORPORATE DISCLOSURE STATEMENT

[Fed. R. App. 26.1]

Pursuant to Fed. R. App. P. 26.1, defendants and appellees Fannie Mae Corporation and Cendant Mortgage Corporation state that Fannie Mae Corporation has no parent corporation and no public company owns more than 10% of Fannie Mae. Cendant Mortgage Corporation is now known as PHH Mortgage Corporation which is a subsidiary of PHH Corporation, a publicly traded company.

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I

ISSUES PRESENTED

1. May plaintiffs appeal a second time after this Court affirmed the dismissal of these defendants and appellees on a prior appeal, or does this Court's prior affirmance dispose of this appeal?

2. Did the District Court abuse its discretion in denying plaintiffs' Rule 60(b) motion based on its finding that plaintiffs had not shown diligence in finding the allegedly "new evidence" and that the evidence would not have changed the outcome?

3. Was the case properly removed from state court based on Fannie Mae Corporation's incorporating statute?

II

STATEMENT OF THE CASE

A. Substantive Facts

This Court needs no introduction to plaintiffs Crystal Lightfoot and Beverly Hollis-Arrington. They have barraged this Court with appeals and mandate petitions as they have assaulted other federal courts in Washington, D.C. and New Jersey. All of this litigation has arisen out of a single, simple set of facts.

In August 1999, Hollis-Arrington got a $180,400 home loan from Cendant Mortgage Corporation ("Cendant"). The loan was secured by a deed of trust on

Hollis-Arrington's home in West Hills, California. Hollis-Arrington never made a payment under the loan. *Hollis-Arrington v. PHH Mortg. Corp.*, 2005 WL 3077853, at *2 (D. N.J. 2005).

Cendant had initially sold the loan to Fannie Mae Corporation ("Fannie Mae") in or about September 1999. About a year later, Fannie Mae demanded that Cendant buy the loan back due, in part, to the fact it was a "first-payment default" loan. (See E.R., 2:29.[1]) Cendant repurchased the loan in about September 2000.

Cendant serviced Hollis-Arrington's loan the entire time, including during the period Fannie Mae owned the loan. Cendant also remained the beneficiary of record, as no assignment of the deed of trust was recorded.

In April 2000, a substitution of trustee form was recorded, substituting Attorneys Equity National Corporation ("Attorneys") as trustee of Hollis-Arrington's deed of trust in place of the original trustee. The substitution was signed by Cendant and it recited that Cendant "is the present Beneficiary under said Deed of Trust." (E.R., 2:32.)

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[1] Plaintiffs have not consecutively numbered the pages of their Excerpts of Record. Hence, the citations in the text are to the volume (1 or 2) of excerpts in which the cited page is found and to the page number of that page as shown in Adobe Reader, which counts the cover and each later page in the volume. The footnoted citation is thus to the 29th page (counting the cover as page 1) of the second volume of plaintiffs' Excerpts of Record. It is a letter from Fannie Mae to Cendant dated August 29, 2000.

After many delays caused by plaintiffs' litigation, Attorneys held a trustee's sale in June 2001. The purchasers at the foreclosure sale, Harold Tennen and Ed Feldman, later conveyed the property to Robert O. Mathews, who conveyed it to Cherry Mae S. Ang, who conveyed it to Ryan and Tara McGinnis. (E.R., 2:23, 2:25.)

B. Plaintiffs' Barrage Of Litigation

This case is but one of these plaintiffs' many suits all of which arose from the just-recited facts. A New Jersey district court accurately summarized these suits as follows:

> In an effort to avoid foreclosure, Ms. Hollis-Arrington filed her first two bankruptcy cases in May and July 2000; both lawsuits were dismissed because Plaintiff failed to make required filing payments. Ms. Hollis-Arrington then deeded her home to her daughter, Ms. Lightfoot, who filed her own bankruptcy petition. This petition was dismissed in October 2000 for failure to make required payments. Ms. Lightfoot transferred title in the home back to Ms. Hollis-Arrington, who filed her third bankruptcy case in March 2001. However, the Property was eventually sold to Defendant Tennen and Ed Feldman in a foreclosure sale on June 29, 2001.
>
> Despite the foreclosure and eviction, Plaintiffs continued to pursue multiple lawsuits. Ms. Hollis-Arrington filed her first federal lawsuit against Cendant in United States District Court for the Central District of California, Western Division, on October 18, 2000. [No. CV-00-11125-CBM.] There, Plaintiff claimed that Cendant had fraudulently promised to provide her with a forbearance agreement after she fell delinquent but reneged and foreclosed on the property instead. In July 2002, the court

granted Cendant's motion for summary judgment, dismissing all of Plaintiff's claims. The Ninth Circuit affirmed the judgment on appeal [No. 02-56279] and the United States Supreme Court denied Hollis-Arrington's petition for certiorari. *Hollis Arrington v. Cendant Mortgage Corp.*, 540 U.S. 1000, 124 S.Ct. 475, 157 L.Ed.2d 404 (2003).

In June 2001, Ms. Hollis-Arrington filed her second lawsuit against Cendant, Fannie Mae and Attorneys Equity National Corporation for violations of RICO, two federal lending statutes and due process, as well as for a variety of state law claims ranging from fraud to slander of title. [No. CV-01-05658-CBM.] Plaintiff's theory underlying these claims was that Cendant conspired with Fannie Mae to make loans to non-creditworthy African Americans in order to induce their default and allow Fannie Mae to foreclose and acquire their property. In May 2002, after several interlocutory filings and the filing of a second amended complaint, the district court granted the Defendants' motion to dismiss all the federal claims including RICO, with prejudice, and granted the Defendants' motion for attorney's fees. On appeal, the Ninth Circuit affirmed, [No. 02-56280], and the Supreme Court again denied her petition for certiorari. *Hollis Arrington v. Cendant Mortgage Corp*., 540 U.S. 963, 124 S.Ct. 406, 157 L.Ed.2d 305 (2003).

In July 2002, Plaintiffs filed a third lawsuit in Los Angeles Superior Court. Not only were all the defendants named in the second lawsuit named again in the third lawsuit, but Plaintiffs made the same allegations in the third action and their claims were based on the same alleged conspiracy to make loans to non-creditworthy borrowers and to subsequently foreclose on their properties. Defendants removed that action to federal court in August 2002. [No. 02-6568-CBM.] Subsequently, the district court granted defendants motion to dismiss the litigation as barred by res judicata [E.R. 1:26-37] and the Ninth Circuit affirmed [No. 03-56580]. Thereafter, De-

fendants moved for an order declaring Plaintiff a vexatious litigant; although this motion was denied, the Court "strongly caution[ed] plaintiff against further filings involving the same facts and/or claims raised in her previous three lawsuits against Cendant and Fannie Mae. The Court has already adjudicated the merits of the issues in those three cases and defendants should not be subjected to further litigation from this plaintiff (or her relatives) on the same issues."

In November 2003, Ms. Hollis-Arrington filed another lawsuit in the United States District Court for the District of Columbia. [No. 1:03-cv-02416.] In this action, Plaintiff added several new defendants including the Honorable Cons[]uelo Marshall of the Central District of California, Western Division, and the Honorable Pam[e]la Rymer, the Honorable Andrew Kleinfeld and the Honorable Stephen V. Wilson, the judges who comprised the Ninth Circuit panel that ruled against Plaintiffs. In addition, although Plaintiffs' new lawsuit recast their claims as violations of Due Process and Equal Protection, these claims were based on the same allegedly wrongful foreclosure of the Cendant loan, and the district court granted Defendants' motion to dismiss based on res judicata. Moreover, the Court ordered "that plaintiff shall file nothing further in relation to this case without leave of Court, other than a notice of appeal, and that any filings plaintiff attempts to make without leave of Court shall be deemed vexatious litigation and sanctioned accordingly." The Court of Appeals affirmed the District Court's decision finding that the lower court did not abuse its discretion by prohibiting Hollis-Arrington from further filings related to the case without leave of Court because she "has a long history of filing meritless litigation concerning the foreclosure underlying this case." [No. 04-5068; 2004 WL 2595891.]

Despite the strong language in the opinions of both the District and Appellate Courts for the District of Columbia, Plaintiffs were not dissuaded from further filings. In

> May 2005, Plaintiffs initiated the instant lawsuit in the District of New Jersey when they filed a complaint against the above defendants [Cendant Corporation, Fannie Mae, PHH Mortgage Corp., Suzann[e] Marie Hankins, Fidelity National Title Insurance Company, Conny B. McCormack, USAA Casualty Insurance Company, Harold Tennen, Household Finance Corporation of California, Judge Consuelo B. Marshall, Judge Stephen V. Wilson, Judge Pam[e]la Rymer and Judge Andrew Kleinfeld, and Robert O. Matthews.]

Hollis-Arrington v. PHH Mortg. Corp., 2005 WL 3077853, at *2-3 (D. N.J. 2005) (record citations omitted).

The New Jersey district court dismissed Hollis-Arrington's suit as against Cendant, Fannie Mae, PHH and Hankins. *Id.*, 2005 WL 3077853, at *5-9. The Third Circuit affirmed the dismissal, though it vacated the accompanying order banning Hollis-Arrington from filing additional litigation without prior approval of the district court. *Hollis-Arrington v. PHH Mortg. Corp.*, 205 Fed.Appx. 48, 2006 WL 3078935 (3d Cir. 2006).

C. Prior Proceedings In This Case

As the New Jersey district court correctly stated, plaintiffs originally filed this case in state court. The suit named as defendants Cendant (dba PHH Mortgage), Fannie Mae, Robert O. Mathews, and Attorneys. (E.R., 2:64.)

Defendants removed the case to federal court where it was assigned to Judge Marshall who had heard the two previous Hollis-Arrington suits. (E.R., 1:3 #1, 1:6

#40, 1:24.) Judge Marshall denied plaintiffs' motion to remand the case to state court. (E.R., 1:18.)

At plaintiffs' request, Attorneys' default was entered, but the district court denied plaintiffs' application for entry of a default judgment against Attorneys. (E.R., 1:5 #21, 22, 1:6 #37, 1:6 #43, 1:10 #78, 1:18, 1:43-44.)

On February 20, 2003, the district court entered its order granting the motions to dismiss filed by Cendant, Fannie Mae, and Mathews. (E.R., 1:8 #59, 1:26-37.) The district court found that plaintiffs' claims alleged in this suit were barred by res judicata based on the judgments rendered against plaintiffs in their first two suits against these defendants. (*Id*.) The order of dismissal notes that the district court had subject matter jurisdiction pursuant to 28 U.S.C. §§ 1441 and 1446 and 12 U.S.C. § 1723(a). (E.R., 1:27.)

On February 26, 2003, plaintiffs filed a notice of appeal from the February 20, 2003 order dismissing their claims against Cendant, Fannie Mae, and Mathews. (E.R., 1:8 #60.) This Court designated that appeal No. 03-55389 and dismissed it for lack of jurisdiction. (E.R., 1:9 #65-68.)

In June 2003, plaintiffs filed a Rule 60(b) motion, based on allegedly "newly discovered" evidence that the substitution of trustee that Cendant had signed was void because Fannie Mae owned the loan at that time. (E.R., 1:9 #70, 71.) On August 29, 2003, the district court denied that motion, finding that the evidence

was not "newly discovered" and would not, in any event, have changed the outcome of the case. (E.R., 1:10 #79, 1:46-51.)

On September 4, 2003, plaintiffs appealed from the order denying their Rule 60(b) motion. (E.R., 1:10 #80.) This Court designated that appeal No. 03-56580. (E.R., 1:10 #81.) On December 15, 2003, this Court entered its order summarily affirming the appealed order. (E.R., 1:11 #89, 1:56.)

The district court closed the case shortly thereafter. (E.R., 1:11 #88, 1:52, 1:54.)

The case lay dormant for several years while plaintiffs carried their litigation campaign to Washington, D.C. and New Jersey, as recounted above.

Then, plaintiffs awoke to the fact that judgment had never been entered against Attorneys. In 2008, they unsuccessfully petitioned this Court for relief. (No. 08-73461; E.R., 1:11 #90.) In April 2009, plaintiffs moved the district court to restore the case to its active caseload for the purpose of entering final judgment. (E.R., 1:11 #92.) The district court entered judgment in favor of Cendant, Fannie Mae and Mathews on October 21, 2009. (E.R., 1:12 #99, 1:68.)

After the plaintiffs again sought relief from this Court (No., 09-74079; E.R., 1:12 #101), the district court entered an order and a judgment dismissing Attorneys on June 11, 2010 (E.R., 1:12-13 #103-104). On July 6, 2010, plaintiffs filed a

notice of appeal from that judgment, thereby commencing this appeal. (E.R., 1:13 #104, 109, 113.)

Plaintiffs then filed a brand new Rule 60(b) motion, raising the same point covered in the Rule 60(b) motion they had filed seven years earlier. (E.R., 1:13 #105.) This Court stayed this appeal pending the resolution of that motion. (E.R., 1:13 #114.)

On September 27, 2010, the district court denied the Rule 60(b) motion. (E.R., 1:14 #118, 1:87-96.) It found the motion untimely as to Cendant, Fannie Mae and Mathews. Acknowledging that it had not entered a final judgment as to those parties after dismissing them in February 2003, it noted that plaintiffs had treated the dismissal as a final judgment and so the time for them to move under Rule 60(b) expired in July 2004. (E.R., 1:93.) The district court also reiterated the findings it made in denying plaintiffs' 2003 Rule 60(b) motion: the evidence was not newly discovered and would not have changed the outcome of the case. Based on those findings, it denied the motion on the merits as well. (E.R., 1:94.)

This Court then lifted its earlier stay of this appeal. (E.R., 1:14 #119.)

III

SUMMARY OF ARGUMENT

The Court should dismiss the appeal or affirm the judgment because it has already reviewed and affirmed the district court's dismissal of Cendant and Fannie Mae in this very case. (No. 03-56580; Dec. 15, 2003 order affirming judgment.)

Neither the district court's failure to enter a separate judgment nor this Court's overlooking the lack of a final disposition as to one defendant justifies allowing plaintiffs a second appeal on the same issues in the same case. A party can waive Rule 58's separate judgment requirement, and plaintiffs did so by seeking relief under Rule 60(b) in 2003 and by appealing at that time. *See Casey v. Albertson's Inc.,* 362 F.3d 1254, 1258-59 (9th Cir. 2004). This Court's earlier affirmance necessarily included a determination that the Court had appellate jurisdiction. Plaintiffs may not now collaterally attack that determination by filing a second appeal. *See Snell v. Cleveland, Inc.*, 316 F.3d 822, 827 (9th Cir. 2002).

Even were the Court to reach the "merits" of this appeal, it should affirm. Plaintiffs do not contend the district court erred in dismissing the claims their complaint alleged against Cendant and Fannie Mae. Instead, they argue only that the district court should have granted them relief under Rule 60(b) to allege a different claim based on the assertedly invalid substitution of trustee form recorded two years before this suit was filed.

Plaintiffs fail to show any abuse of discretion in the district court's denial of that relief. As the district court found, the allegedly new evidence was not newly discovered, but was a matter of public record for a considerable period. As it also correctly concluded, the new evidence would not have changed the outcome because the judgments against plaintiffs in their first two cases precluded this third suit arising from this one set of facts. Newly discovered evidence provides no exception to the res judicata effect of a prior judgment.

Finally, the district court properly exercised removal jurisdiction over this case pursuant to 12 U.S.C. § 1723(a), which grants Fannie Mae the right to sue in federal court. Alternatively, the Court need not and should not reach the subject matter jurisdiction question because its prior summary affirmance is law of the case on that issue or because it now makes no difference due to the fact that Fannie Mae is now in federal conservatorship and the conservator is clearly permitted to intervene and remove the case to federal court.

IV

STANDARDS OF REVIEW

This Court necessarily reviews de novo the effect of its prior order of affirmance in No. 03-56580. The question is purely one of law. It is peculiarly within this Court's purview. And, the district court did not and could not rule on it.

"Motions for relief from judgment pursuant to Rule 60(b) are addressed to the sound discretion of the district court and will not be reversed absent an abuse of discretion. ***SEC v. Coldicutt***, 258 F.3d 939, 941 (9th Cir. 2001). A district court abuses its discretion if it does not apply the correct law or if it rests its decision on a clearly erroneous finding of material fact. ***Bateman v. United States Postal Serv***., 231 F.3d 1220, 1223 (9th Cir. 2000)." ***Casey,*** 362 F.3d at 1257.

The district court's decision as to its subject matter jurisdiction is reviewed de novo. *See Atwood v. Fort Peck Tribal Court Assiniboine*, 513 F.3d 943, 946 (9th Cir. 2008); *Schnabel v. Lui*, 302 F.3d 1023, 1029 (9th Cir. 2002).

V

PLAINTIFFS ALREADY HAD AND LOST THEIR ONE APPEAL FROM DISMISSAL OF THEIR CLAIMS AGAINST CENDANT AND FANNIE MAE

Like all other plaintiffs in federal court, Lightfoot and Hollis-Arrington are entitled to one, but only one, appeal from the dismissal of their claims against defendants. They have already taken and lost that appeal. They cannot hit rewind and try again seven years later.

In 2003, plaintiffs appealed from the district court's orders dismissing their claims against Cendant, Fannie Mae and Mathews and denying their first Rule 60(b) motion. (E.R., 1:10 #80, 81.) That appeal (No. 03-56580) was *not* dismissed for lack of jurisdiction. Instead, on December 15, 2003, this Court summarily

affirmed. (E.R., 1:11 #89, 1:56.) That was a ruling on the merits of plaintiffs' appeal. It finally resolved against plaintiffs any claim of error in the dismissal or denial of relief under Rule 60(b).

Now, more than seven years later, plaintiffs cannot appeal again or obtain a second appellate review of the propriety of the same orders. The prior affirmance establishes, as law of this case, that both dismissal and denial of relief under Rule 60(b) were proper.

Under the law of the case doctrine, "the decision of an appellate court on a legal issue must be followed in all subsequent proceedings in the same case." *In re Rainbow Magazine, Inc.*, 77 F.3d 278, 281 (9th Cir. 1996); *see also Planned Parenthood of Columbia/Willamette, Inc. v. American Coalition of Life Activists*, 518 F.3d 1013, 1017 (9th Cir. 2008). The prior appellate decision is followed on a later appeal in the same case "unless (1) the decision is clearly erroneous and its enforcement would work a manifest injustice; (2) intervening controlling authority makes reconsideration appropriate; or (3) substantially different evidence was adduced at a subsequent trial. *Hegler v. Borg*, 50 F.3d 1472, 1475 (9th Cir. 1995).

Plaintiffs have not tried, and could not succeed, in showing that any exception to the law of the case doctrine applies to this second appeal from the same orders. The original affirmance was not clearly erroneous, nor does it work any injustice. Neither facts nor law has changed at all since the first appeal.

Plaintiffs seem to feel that they get a second shot at the same target simply because their initial appeal was premature. The district court had not yet entered a separate judgment in conformity with Rule 58(a) dismissing their claims against Cendant and Fannie Mae. However, parties may waive entry of a separate judgment, either expressly or by their conduct, such as by moving for relief under Rule 60(b) or appealing. *See Casey*, 362 F.3d at 1259. In 2003, plaintiffs filed two notices of appeal from the dismissal of their claims against Cendant and Fannie Mae *and* moved for relief from that dismissal under Rule 60(b). They thereby waived any objection based on the district court's failure to enter a separate judgment at that time. The filing of a separate judgment seven years later could not resurrect those long resolved challenges to the dismissal and denial of Rule 60(b) relief nor could that belated filing grant plaintiffs a second chance to bring the same appeal.

Likewise, the fact that judgment had not yet been entered against one co-defendant, the defaulted Attorneys which dissolved in 2004 (see E.R., 1:43-44), does not render this Court's former affirmance a nullity. While plaintiffs might have attacked the affirmance directly on that ground—by seeking rehearing or petitioning for certiorari—they may not do so collaterally, by filing a second appeal on the same grounds and simply disregarding the prior affirmance.

> Although a judgment may be dismissed on direct review, it may not be attacked for lack of subject matter jurisdic-

> tion in a collateral proceeding. Case law makes it clear that the presumption of jurisdiction over the subject matter and over the persons involved in the action, is an inherent characteristic of a judgment.

Snell, 316 F.3d at 827 (citations omitted).

The same principle should protect this Court's prior affirmance from attack now on the ground that the judgment from which plaintiffs then appealed was not final. If there were any error in this Court's ruling on the merits of that appeal, it was error that plaintiffs invited and about which they should not now be allowed to complain so as to win, by their own improper earlier appeal, the opportunity of a second appeal from the same rulings.

Finally, even if the prior affirmance is not binding and does not absolutely bar this second appeal, the determination is certainly entitled to respect. Plaintiffs have shown no reason why the Court should reconsider that prior ruling. Instead, it should simply follow its prior resolution of these same issues and affirm.

VI

THE DISTRICT COURT DID NOT ABUSE ITS DISCRETION IN DENYING PLAINTIFFS' RULE 60(b) MOTION

Plaintiffs have not shown that the district court abused its discretion in denying their Rule 60(b) motion.[2] The district court invoked the correct legal standard and based its decision on factual findings that were not clearly erroneous.

"To establish that a district court abused its discretion in denying [a Rule 60(b)] motion based on newly discovered evidence, the movant must show that: '(1) the evidence was discovered after trial, (2) the exercise of due diligence would not have resulted in the evidence being discovered at an earlier stage and (3) the newly discovered evidence is of such magnitude that production of it earlier would likely have changed the outcome of the case.' "[3]

In this case, the district court properly invoked the second and third elements of the just-stated legal test, thus applying a proper legal standard. It found that plaintiffs had not shown their "newly discovered" evidence could not have been found and presented earlier through the use of reasonable diligence. It also found

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[2] As stated above (p. 12), this Court reviews the district court's denial of a Rule 60(b) motion for abuse of discretion. *Coldicutt*, 258 F.3d at 941.

[3] *Far Out Productions, Inc. v. Oskar*, 247 F.3d 986, 992-93 (9th Cir. 2001) (*quoting Defenders of Wildlife v. Bernal*, 204 F.3d 920, 929 (9th Cir. 2000)); *accord*: *Dixon v. Wallowa County*, 336 F.3d 1013, 1022 (9th Cir. 2003); *U.S. Xpress Enters., Inc. v. J.B. Hunt Transp., Inc.*, 320 F.3d 809, 815 (8th Cir. 2003).

that the supposedly new evidence would not have changed the outcome. (E.R., 1:49-51, 1:94.) Neither of these factual findings is clearly erroneous.

As the district court pointed out, the "newly discovered" evidence consisted of three documents, a substitution of trustee form, a trustee's deed upon sale, and a rescission of that deed.[4] Each of these documents was publicly recorded more than a year before this suit was filed. (E.R., 1:49-50.) Publicly recorded documents are, by definition, discoverable with reasonable diligence, especially in a case like this involving title to real property. Also, as the district court correctly observed, the copies of these deeds which plaintiffs produced showed on their face that they were obtained from Lexis/Nexis and thus were even more clearly available to any member of the public who exercised reasonable diligence. (E.R., 1:50.)

Also, the district court correctly found that plaintiffs' "new documents" would not have changed the outcome. The district court dismissed plaintiffs' claims against Cendant and Fannie Mae in this case, concluding that those claims were barred by the res judicata impact of the judgments rendered against plaintiffs in their two prior actions against these same defendants. (E.R., 1:33-35.) Plaintiffs' "new" evidence does not afford them any escape from res judicata.

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[4] On appeal, plaintiffs also point to one other document, a letter from Fannie Mae to Cendant demanding that Cendant repurchase Hollis-Arrington's loan. (*See* E.R., 2:29.) Handwritten notes on the letter show that Hollis-Arrington, had that document in her possession over a year before filing this action.

Only extrinsic, not intrinsic, fraud offers any escape from the force of a prior judgment. *See Myers v. Gardner,* 361 F.2d 343, 345-46 (9th Cir. 1966). The "new" evidence shows no fraud at all, and certainly not extrinsic fraud. Plaintiffs did not show that anything Cendant or Fannie Mae did or did not do prevented from plaintiffs from finding or presenting their "new" evidence in either of the two prior actions.

In short, the district court did not abuse its discretion in denying plaintiffs' Rule 60(b) motion.

VII

THE DISTRICT COURT HAD SUBJECT MATTER JURISDICTION

This case was removed to federal court on the ground that Fannie Mae was named as a defendant and its federal charter, 12 U.S.C. § 1723a(a), confers federal subject matter jurisdiction. There was and is substantial authority for that proposition. *See Pirelli Armstrong Tire Corp. Retiree Med. Benefits Trust v. Raines*, 534 F.3d 779, 784-88 (D.C. Cir. 2008) and authorities there cited.

There is contrary authority as well. *See Rincon Del Sol, LLC v. Lloyd's of London,* 709 F.Supp.2d 517, 522-25 (S.D. Tex. 2010) and authorities there cited.

Pirelli, Rincon, and the ones they cite, fully explore the opposing arguments on this issue. Cendant and Fannie Mae will not impose on the Court by restating

those arguments here at length. Instead, they refer the Court to the cited cases, and particularly ***Pirelli***, a decision of a sister Court of Appeals, and one that, in appellees' view, is more persuasive. The Court should follow ***Pirelli's*** cogent reasoning and affirm.

Alternatively, and more appropriately, the Court should exercise judicial restraint, avoid the issue here, and await a more suitable vehicle, in which the issue is more fully briefed and argued, to decide this potentially important question. The Court may properly do so for one or both of two independent reasons.

First, the Court's earlier affirmance in appeal No. 03-56580 necessarily included a determination that this Court and the district court had subject matter jurisdiction of the case. This Court is required to examine subject matter jurisdiction sua sponte in every appeal. *See Arbaugh v. Y & H Corp.*, 546 U.S. 500, 514 (2006) (stating that courts "have an independent obligation to determine whether subject-matter jurisdiction exists, even in the absence of a challenge from any party").

So it must be presumed this Court made the required inquiry on the prior appeal in this case and concluded the district court had subject matter jurisdiction. Otherwise, it would not have affirmed, but would have vacated the dismissal and remanded with directions to remand the case to state court. The affirmance, thus, necessarily includes a finding that the district court had subject matter jurisdiction,

and that finding is now law of the case (see p. 13 above) which this Court should follow on this later appeal, particularly as reviving this substantively meritless suit on that procedural ground a decade after removal would work an obvious hardship.

Second, a reversal and remand at this point would clearly be a waste of time and resources, changing nothing in the end. As is well known, as a result of the mortgage crisis and recession, the federal government took over Fannie Mae. The Federal Housing Finance Agency ("FHFA") now acts as Fannie Mae's conservator.

Were the case now to be remanded to state court, the FHFA would have the right, as conservator, to intervene and remove the case to federal court once more. As the Nevada district court recently ruled:

> [T]he Court finds that FHFA, as conservator for Fannie Mae and as an intervenor in this case, is a federal agency with the right to remove. See 12 U.S.C. § 4511(a) (providing that the FHFA is an "independent agency of the Federal Government" which has authority over Fannie Mae); 12 U.S.C. § 4617(b)(11)(B)(i) (providing that in the event of any appealable judgment, the Agency as conservator "shall have all of the rights and remedies available to the regulated entity (before the appointment of such conservator or receiver) and the Agency, including removal to Federal court and all appellate rights"); 28 U.S.C. § 1442(a)(1) (providing that a "civil action or criminal prosecution commenced in a State court against [the United States or any agency thereof] may be removed by them to the district court of the United States").

Nevada ex rel. Hager v. Countrywide Home Loans Servicing, LP, 2011 WL 484298, at *3 (D. Nev. 2011).

Clearly, nothing would be gained by remanding this decade-old case back to state court only to have it removed again, thus requiring the parties and the courts to redo all the work that years of litigation in federal court have already accomplished.

For all of these reasons, the Court should either decide that the district court had subject matter jurisdiction or that, in light of the circumstances just mentioned, it is unnecessary to resolve that issue in order to affirm the judgment below.

VIII

CONCLUSION

For the reasons stated above, the judgment should be affirmed.

Dated: March 14, 2010.

SEVERSON & WERSON
A Professional Corporation

/s/ *Jan T. Chilton*

By_____
Jan T. Chilton

Attorneys for Defendant and Appellee
E*TRADE Mortgage Corporation

EXHIBIT “F”

No. 10-56068

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

BEVERLY ANN HOLLIS-ARRINGTON
CRYSTAL M. LIGHTFOOT

Plaintiffs-appellants

v.

FANNIE MAE; CENDANT MORTGAGE dba PHH MORTGAGE

ROBERT O. MATTHEWS; ATTORNEYS EQUITY NATIONAL

CORP.

Defendants-Appellees

APPELLANTS INFORMAL PETITION FOR PANEL REHEARING

AND

PETITION FOR REHEARING EN BANC

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INTRODUCTION

Pursuant to Rules 35(b) 1 and 40(a), of the Federal Rules of Appellate procedure, appellants, Beverly Hollis-Arrington and Crystal M. Lightfoot hereby petition the court for rehearing and rehearing en banc for the follow reasons:

- The panel's decision conflicts with several decisions of the United States Supreme Court and of this court in; *Rivet, ET. Al, vs. Regions Bank Louisiana* 522 U.S. 470; *Marshall v. Holmes 141 U.S.589; Hazel-Atlas v. Hartford-Empire* and *Beggerly ET. Al. 524 U.S. 38; 118 S. Ct. 1862* (Supreme Court cases). *Pumphrey vs. Thompson tool; Latshaw vs. Trainer Wortham; Ultramar v. Dwelle 900 F.2d 1412; Chacon v. Babcock, 640 F.2d 221 (9th Cir. 1981)* and *Frank Briscoe Co., Inc. v. Morrison-Knudensen Co., Inc., 776 F.2d 1414, 1416 (9th Cir. 1985) (certification of final judgment……)*

- The proceedings involves one or more questions of exceptional importance, as the panels decision conflicts with the authoritative

decision of other United States Courts of Appeals that have addressed the issue.

The decision of the panel does little more then punish us as pro se litigants and doing our job; and if the authoritative decisions of the U.S. Supreme Court, this court, and other U.S. Courts of appeal are applied, it would mean that "WE WIN" instead of being the loser.

The decision issued by the panel in this appeal, is in total conflict with the authoritative decisions of this court and decisions of the U.S. Supreme Court and other U.S. Courts of appeals who have addressed the issues. The case sighted to retain jurisdiction and avoid remand to the State court is; "Ultramar", which has been clarified by the U. S. Supreme Court in "Rivet".

To allow this decision to stand, without the benefit of an en banc rehearing to bring it back within the authoritative decisions and F.R.C.P.;, of the U.S. Supreme Court, this circuit, and other U.S.

Circuit courts of appeals that have addressed the issues presented would be a "GRAVE MISCARRIAGE OF JUSTICE".

BACKGROUND

This case, "simply put" is about a wrongful foreclosure; Cendant Mortgage dba PHH Mortgage, who originated Hollis-Arrington's loan in August 1999, then sold appellants loan and all of the beneficial interest on the secondary market to Fannie Mae in September 1999. Cendant did remain as the servicer of the loan during the time which Fannie Mae owned the loan, from 9/1999 to 11/2000.

In 9/2000 Cendant was requested to repurchase the loan from Fannie Mae, they did so in 11/2000. But not before cutting Fannie Mae from the chain of title in January 2000, and forging the notice of default and substitution of trustee to foreclose on appellants home in violation of California's foreclosure scheme as articulated in Cal. Civ. Coode § 2934(a) and 2924 (a-h).

When appellant, Hollis-Arrington fell behind in her payments, and sought to forebear four payments in 2000; Cendant Mortgage now PHH Mortgage (who had the sole role of servicer), hid behind the denial of a

verbal promise, to give appellant(s) a forbearance agreement in February 2000 in case 00-CV-11125 CBM. On 01/18/00 Cendant Mortgage falsely forged and filed a notice of default, stating that they were the beneficiary and had the legal right to file a notice of default pursuant to Cal. Civ. Code § 2924(1). At the time of that filing, this was false.

On 01/18/00, Cendant Mortgage executed a forged substation of trustee, appointing Attorneys Equity as the new trustee under the deed of trust. Fannie Mae was the true owner of the loan on the date Cendant forged the substitution. The forged document was acknowledged on 3-17-00 (Fannie Mae was still the owner at this time) and it was filed in the office of the Los Angeles County recorder on April 24, 2000 @ 8:00 a.m.

While appellants have made many attempts to set aside the sale of their home since 2001, the events which are relevant to the wrongful foreclosure and which makes "VOID" are the details articulated above. Because Cendant Mortgage forged and recorded the forged documents in January 2000, when Fannie Mae was true beneficiary the sale was "VOID" as a matter of law when the events are reconciled against California statutory scheme as articulated in Cal. Civ. Code §2934(a) and § 2924(a-h) .

This appeal represented the third case filed by Hollis-Arrington, regarding the wrongful foreclosure of her home. The first two cases were

filed in the Los Angeles district court as; 00-CV-11125 CBM and 01-CV-5658 CBM. This case on appeal was filed in the state Superior Court, with all state causes of action, and no diversity of citizenship to address the violation by defendants of State statutes, governing California statutory foreclosure scheme.

The suit sought set aside the sale, quiet title, slander of title, fraud and deceit, declaratory relief, etc. There were no federal causes of action disguised as state claims, no diversity, or any claims that could be brought to the federal court in the first instance. Based on those facts, appellant satisfied their selves, that the court of proper jurisdiction was the state court.

Appellants knew that they would face a res judicata challenge, but were prepared to show that the wrongful foreclosure was based on fraud, and that the fraud was present in the first case filed in the district court; but was not discovered by the appellants until the filing of the case in the State Court.

Fannie Mae removed this state action to the district court claiming; "that their charter conferred federal jurisdiction, even if there is no federal question on the face of the complaint, or diversity present. All defendants joined in the removal petition. Appellants immediately filed a motion to remand to state court, which was denied without comment.

All defendants with the exception of Attorneys Equity filed a motion to dismiss in district court, which was granted with prejudice; without a review by the district court of California's statutory foreclosure scheme pursuant to Cal. Civ. Code §§ 2924(a-h) and 2934(a) and the fraud on the appellants and the court, used by the defendants and their attorneys to foreclose on appellants home; which was the basis for the "STATE" claims.

Attorneys Equity did not answer, and was defaulted, by appellants. Appellants filed a motion for default judgment against Attorneys Equity in the district court, which was denied. In February 2004, and without explanation, the court removed the case from the active caseload and closed it without stating what was needed to move to final judgment for the purpose of appeal.

In early 2004 appellant Hollis-Arrington's sister was diagnosed with stage 4 cancer to the neck and throat. Although the doctors put the cancer at stage 4, it was obvious to Hollis-Arrington, that the doctors used the verbiage of stage 4 cancer, as opposed to terminal cancer in an effort to give Valerie and the family a little hope for a small chance of survival.

Appellant, Hollis-Arrington hit the ground running in 2004 in search of doctors, to and save her sisters life. Since Valerie was a mentally challenged alcoholic, who choose to make her home on the streets of Lynwood

California; the family had been overseeing her welfare by means tracking her down, in her well known hangouts and providing food and money to her.

However, when Valerie was diagnosed with cancer, Appellant Hollis-Arrington knew that she had to break through Valerie's mental disability and make Valerie understand; that she was without hope if she stayed on the streets without medical treatment. The talk with Valerie worked; she agreed to come home with appellant, Hollis-Arrington, so that medical treatment could be secured for her. The only problem with Hollis-Arrington bringing Valerie home with her was, that she herself, had no home to bring Valerie to. Appellant herself was living with family and friends, because her home had been taken by wrongful foreclosure.

In early 2005, near the end of Valerie's life; after a valiant fight by Valerie; and the heroic doctors at Saint Josephs hospital who went beyond the call of duty, to save Valerie's life, Valerie serum to the cancer.

In late 2008 appellants came to this court on mandamus, seeking to have the district court restore the case to the active case load, and issue final judgment to proceed to appeal. The petition for mandamus was denied, and although the district court was aware by way of the mandamus petition that appellants were trying to move this case on to appeal; the court took no action to reopen the case and issue final judgment on it's own.

On 04/07/2009 appellants filed a motion in the district court to restore the case to the active case load for the purpose of adjudicating Attorneys Equity, issuing final judgment, and to recuse Judge Marshall. In January of 2010, more then a year from the date of the motion set forth to the district court, final judgment had not been issued and the appellants returned to this court once again on mandamus.

The petition was denied without prejudice, as to the filing of a new petition if the court had not entered final judgment within 90 days. This order was very encouraging to appellants. On 06/11/2010 the district court entered its order dismissing Attorneys Equity. However, the court did not enter a final judgment, and appellants treated the judgment dismissing Attorneys Equity, as a final adjudication of all issues as defined in F.R.C.P rule 54(b).

On 6/11/2010 appellant simultaneously filed a rule 60(b) motion to set aside the judgments in this appeal, and in consolidated appeals 10-56649/10-56651; based on section (4) and (6) of the rule or in the alternative an independent action for fraud upon the court by officers of the court. In the rule 60(b) motion; appellants again raised the jurisdictional question upon which Fannie Mae had removed this action to the district court. "NON OF

THE APPELLES" filed a response in district court to the rule 60 (b) motions.

The district court refused address the issued of appellants allegations of fraud by the defendants, violations foreclosure of California's statutory scheme pursuant to; Cal. Civ. P. §2934(a), of appellants home; and which was the bases of the complaint filed in the state superior court.

EN BANC REHEARING IS NECESSARY AS THIS APPEAL PRESENT A QUESTION OF EXCEPTIONAL IMPORTENCE AND INVOLVES ISSUES ON WHICH THE PANELS DECISION CONFLICTS WITH THE AUTHORITATIVE DECISSIONS OF OTHER UNITED STATES COURTS OF APPEALS THAT HAVE THE ISSUES

It has been estimated that more then "6 MILLION" people nationwide have lost their homes to foreclosure since the beginning of the financial crisis in 2007; with another wave of more then "2 MILLION" new foreclosures predicted to hit the market in 2012. Large numbers of homeowners have claimed or are claiming that the foreclosures were wrongful; and involved misconduct on the part of the banks in the foreclosing of their homes.

And even more compelling, it that Appellee Fannie Mae and Cendant mortgage through their counsel admits, that the loan was sold to Fannie Mae, and that they were assigned the beneficial interest; but that they did not record the assignment which allowed Cendant to forge the foreclosure documents.

Judges of the district court have stated that they have been overwhelmed by wrongful foreclosure claims, and most of the judges in the district courts seem, to be acting with great compassion in affording these homeowners an to attempt to make their cases of wrongful foreclosure to the court. (Appellant Hollis-Arrington has read many of the orders from the district court filed on Lexis).

With those numbers in mind; the incorrect decision of the panel, again victimizes these appellants, who have already been victimized by the defendants and their attorneys for more the 12 years, and sends a signal to the banks that the court will uphold their unlawful schemes. More over and of more importance, applying the correct law and being afforded due process, in an en banc review by the full court means; "WE WIN" as opposed to we loose by way of a faulty review. The panel just pain old "GOT IT WRONG" for the reasons set forth below:

FANNIE MAE'S CLAIM OF FEDERAL JURISDICTION WAS LEFT UNADDRESSED AND THE PANEL FOUND JURISDICTION UPON AN OLD OF OPINION OF THIS CIRCUIT WHICH AS BEEN CLARRIFIED BY THE U.S. SUPREME COURT; AND APPLIED IS BY EVERY OTHER COURT OF APPEALS

Fannie Mae's argument for removing this case to the district court was; their charter conferred federal jurisdiction on the complaint, even in the absence of a federal question, or diversity. And while no circuit has addressed Fannie Mae's charter, this circuit has consistently held that removal of a state court action is proper only if it originally could have been filed in federal court. *28 U.S.C § 1441.* Federal courts have jurisdiction to hear, originally or removal, only those cases in which a well-plead complaint establishes either that federal law creates the cause of action, or that the plaintiff's right to relief necessarily depends on resolution of a substantial question of federal law. *"Franchise Tax Board v. Construction Laborers Vacation Trust, 463 U.S. 1, 27-28, 103 S. Ct.2841, 2855-56, 77 L.Ed.2d 420 (1983).*

On appeal the panel disregarded Fannie Mae's argument as to its charter conferring federal jurisdiction and substituted it with their finding of res judicata as a bases for removal under "*Ultramar v. Dwell*". Ultramar speaks

to an artfully plead complaint, and explains that an artfully plead claim is one that in reality arises under federal law and thus must be recharacterized as such despite the fact that it purports to rely solely on state law. *See, e.g., Olguin v. Inspiration Consol. Copper Co. 740 F.2d 1468, 1472 (9th Cir. 1984)* (citing *Franchise Tax Bd., 463U.S. at 22, 103 S. Ct. at 2852).* The court in Ultramar went on to say: "One cannot sue in federal court on a claim of federal res judicata, recharacterizatin must occur.

In appellants appeal, the entire outcome rest on a violation of California's statutory foreclosure scheme, and the California Statute that governs substitution of a trustee to conduct the trustee sale. All other causes of action are directly related to the foreclosure violation and sounded in State law.

Ultramar was remanded back to state court, based on the same premise of res judicata that exist in appellants appeal and the Ultramar court held; "We hold that when the prior federal judgment was grounded in state law, the state claims contained in a subsequent action filed in state court cannot be recharacterized as federal for purposes of removal".

It was appellant's original complaint filed as 00-CV-11125 CBM and on appeal as 10-56649, which created the res judicata bar to this case at bar. That case was a state contract dispute, with the federal court sitting in

diversity. The claims on appeal are all state claims and can not be reclassified as federal claims.

Additionally, the U.S. Supreme court granted Certiorari to resolve this removal in *Rivet v. Regions Bank of Louisiana 522 U.S. 470, 118 S. Ct. 118 S. Ct. 921.* In which the court held "In sum, claim preclusion by reason of a prior federal judgment is a defensive plea that provides no basis for removal under *§ 1441(b).* Such a defense is properly made in the state proceeding, and the state courts disposition of it is subject to this courts ultimate review.

Therefore, Ultramar is not properly applied to Fannie Mae's removal as it was clarified by the U.S. Supreme court In Rivet. This case should be returned to the court of proper jurisdiction which is the State court.

FINAL JUDGMENT IN THIS CASE DID NOT ISSUE UNTIL 6/11/10

The panels decision as to Judge Marshall's abuse of discretion is equally "FLAWED" in denying appellants rule 60(b) motion notwithstanding the fact that appellants clearly brought their motion pursuant to sections (4) "VOID" as a matter of law pursuant to Cal. Civ. P. § 2934(a), and our denial of due process by the court for failing to address this issue. 60(6), as our motion in the district and our appellant brief clear articulates; "fraud upon the court by officers of the court".

Arguing that all of the attorney's in this appeal and our prior cases were fully aware that Fannie Mae was part of the chain of title, as they sighted the chain of title and owned the loan at the time the documents were recorded to begin foreclosure in appellants home; as they recited the chain of title in each of their briefs in the district court.

However, for the purposes of California Statutory foreclosure scheme, they knew Cendant was not the beneficiary, and that the foreclosure would be rendered "VOID" by their forgery of the notice of default and substitution of trustee, yet made a conscious choice to keep this crucial information from the court which would have ended the case.

At any rate, this appeal was governed by F.R.C.P. rule 54(b). Even though the court dismissed Fannie Mae, Robert O. Matthews and Cendant Mortgage on 2/20/03; there is no rule 54(b) certification as to that order. All claims were not disposed of until 6/11/10. F.R.C.P. Rule *60(b)* does not provide relief from judgments, orders, or proceedings that are not final decisions within the meaning of 28 U.S.C. § 1291, which generally cannot be appealed immediately. See *School Dist. No. 5 v. Lundgren, 259 F.2d 101, 104 (9th Cir. 1958)* *See also* *United States v. Martin 226 F.3d 1042, 1048 n. 8 (9th Cir 2000)* *(rule 60(b)...applies only to motions attacking final, appealable orders").*

Therefore, since final judgment was had on 6/11/10 and appellants filed their rule 60(b) motion 6/11/10; it fell well within the one year statute of rule 60(b) (3).

The panels decision not address the fraud upon the court by officers of the court is in conflict with the courts in: ***Beggerly, 524 U.S. 38; 118 S. Ct.1862*; also *Hazel v. Hartford 322 U.S. 238; 64 S. Ct. 997* also *Marshall v. Holmes 141 U.S.589;*** *which explains what constitutes and "GRAVE MISCARRIAGE OF JUSTICE". Also see: Pumphry v. Thompson tool 62 F.3d 1128; and Dixon v. Internal Revenue Service.*

Absent an en banc review by this court to correct the conflicts of the panel when reconciled to the authoritative decisions of the U.S. Supreme Court, the other circuit courts of appeals and this circuit; the decision of the panel will serve as a complete miscarriage of justice.

January 19, 2012 respectfully submitted,

BY: _____ _____
Beverly A. Hollis-Arrington Crystal M. Lightfoot

EXHIBIT “G”

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

CRYSTAL MONIQUE LIGHTFOOT; BEVERLY ANN HOLLIS-ARRINGTON,

Plaintiffs - Appellants,

v.

CENDANT MORTGAGE CORPORATION, doing business as PHH Mortgage; et al.,

Defendants - Appellees.

No. 10-56068

D.C. No. 2:02-cv-06568-CBM-AJW
Central District of California,
Los Angeles

ORDER

Before: GOODWIN, WALLACE, and McKEOWN, Circuit Judges.

We hereby sua sponte withdraw the memorandum disposition filed on January 9, 2012.

Appellants' petition for panel rehearing and petition for rehearing en banc are denied as moot.

Upon review of the record and the briefing, this court has determined that the appointment of pro bono counsel in this appeal would benefit the court's review. The court by this order expresses no opinion as to the merits of this appeal. The Clerk shall enter an order appointing pro bono counsel to represent appellants for purposes of this appeal only.

Pro bono counsel shall consult with appellants to determine whether: (1) replacement briefing; or (2) supplemental briefing and appellants' previously filed briefs will be submitted to the judges deciding this appeal. The court encourages the submission of replacement briefing rather than supplemental briefing. Appellees shall also file a replacement or supplemental brief, or shall notify the court in writing that appellees stand on the previously filed answering brief. Both parties shall state on the cover pages of the briefs whether they are replacement briefs or supplemental briefs.

The parties may file replacement excerpts or supplemental excerpts. If replacement excerpts are filed, the previously tendered excerpts will be stricken. The absence of replacement excerpts will be treated as a joinder in the previously submitted excerpts.

In addition to any other issues the parties address in their briefs, they shall address whether the district court had subject matter jurisdiction on the basis of the federal charter of the Federal National Mortgage Association ("Fannie Mae"), 12 U.S.C. § 1723a(a).

Pro bono counsel shall appear at oral argument. The Clerk shall establish a supplemental/replacement briefing schedule. The appeal is stayed pending further order of this court.

If appellants object to the court's appointment of counsel in this appeal, appellants shall file a written objection within 14 days after the date of this order.

EXHIBIT “H”

CASE NO. 10-56068

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

BEVERLY HOLLIS-ARRINGTON & CRYSTAL LIGHTFOOT,

Appellants,

v.

CENDANT MORTGAGE CORPORATION, *ET. AL.*

Appellees

On Appeal from the United States District Court for the Central District of California (no. 02-cv-6568)

Appellants' Opening Brief

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Corporate Disclosure Statement

There are no corporate or other business entity interests entangled with Appellants.

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II. TABLE OF AUTHORITIES

Statutes and Regulations

Cases

III. JURISDICTIONAL STATEMENT

Pursuant to *Ninth Circuit Rule 28-2.2*, Appellants, Beverly Hollis-Arrington and Crystal Lightfoot, hereby submit the following statement of jurisdiction.

In August 2002, Appellee, Federal National Mortgage Association ("Fannie Mae"), removed Appellants' state court lawsuit to U.S. district court. Fannie Mae's basis of removal was that its congressionally created charter's "sue and be sued clause" conferred upon it federal court jurisdiction. *28 USC sec. 1441(c)(1)(A).*[1] All other Appellees joined Fannie Mae in the removal. The district court, despite Appellants' application to do so, never remanded the matter to state court.

The matter lingered in U.S. District Court for the Central District of

[1] A Ninth Circuit panel independently concluded removal was proper here under *Ultramar America Ltd. v. Dwelle*, 900 F.2d 1412 (9th Cir. 1990). Appellants' removed complaint here does not fit within *Ultramar's* stated scenario. *Ultramar's* points, more importantly, are in extreme doubt given *Rivet v. Regions Bank of Louisiana*, 522 U.S. 470 (1998). The panel *sua sponte* withdrew the previous opinion. Accordingly, Appellants believe principles from *Ultramar* are no longer germane to the discussion, but preserve the basic argument in this footnote should it be necessary to amplify and elaborate on it later.

California for several years, and had to be restored onto the district court's active caseload by suggestion from the Ninth Circuit. Final judgment was entered pursuant to *Fed. R. Civ. Pro. 58*, by the district court judge on June 11, 2010. (Excerpt pg. 5). Appellants timely filed a notice of appeal on July 6, 2010, within 30 days of entry of final judgment. (Excerpt pg. 1; *Fed. R. App. Proc. 4*). To date, no appeals court has issued a determination regarding the issues raised below. Appellants hereby request the Ninth Circuit to review the matter as final judgment has been rendered by a district court sitting within this judicial circuit. *28 U.S.C. secs. 1291 & 1294.*

IV. ISSUE PRESENTED

Does the phrase in the Fannie Mae Charter Act, "to sue and be sued, and to complain and defend, **in any court of competent jurisdiction**, State or Federal," confer automatic federal jurisdiction?

V. SUMMARY OF CASE AND FACTS

In 2002, Appellants filed suit against Appellees in California state court. There is no dispute Appellants' underlying claims are all state law

claims stemming from a real property foreclosure matter. Appellee Fannie Mae, thereafter, had the matter removed to U.S. district court. All other Appellee's concurrently joined in Fannie Mae's removal of the action.

Fannie Mae's basis of removal was under a belief that its congressionally created charter conferred automatic federal jurisdiction. *12 USC sec. 1723a*. That statute says Fannie Mae has authority "to sue and be sued, and to complain and defend, in any court of competent jurisdiction, State or Federal."

Fannie Mae believes the Supreme Court in *American National Red Cross v. S.G. &A.E.*, 505 U.S. 248 (1992), conclusively determined that a "sue and be sued" provision contained in a charter act of a federally chartered corporation, that expressly mentions federal courts, confers original and automatic federal jurisdiction over all cases to which the federally chartered corporation is a party. Fannie Mae believes the consequence of *American National Red Cross* is that Fannie Mae is authorized to remove from state to federal court any state law action it is defending simply because its "sue and be sued" clause mentions federal courts. The district court agreed with Fannie Mae.

After removal, Appellants immediately sought a remand in district court arguing Fannie Mae's charter did not confer automatic federal question jurisdiction. Judge Lew denied Appellants' application to remand on September 5, 2002.

The attached opening brief appendix contains a copy of Judge Lew's order denying the application to remand as well as abridged versions of Appellants and Fannie Mae's positions regarding the removal question. The record excerpt is short as this matter hinges purely on a legal question. The excerpts show Fannie Mae's removal stemmed entirely from its "sue and be sued" clause and not because some federal question was patent or implicit in Appellants' state court complaint. The complaint's caption page is included to show the state law nature of it. (Excerpt pgs 6-14).

VI. SUMMARY OF ARGUMENT

Fannie Mae's charter act does not confer automatic federal subject matter jurisdiction. The "sue and be sued" clause at-issue in *Red Cross* specifically says that organization is authorized "to sue and be sued in courts of law and equity, State or Federal, within the jurisdiction of the United States." The Red Cross' clause is distinguishable from Fannie Mae's clause

that contains the phrase "in any court of competent jurisdiction." The Ninth Circuit, interpreting Supreme Court precedent, has determined that the phrase "in any court of competent jurisdiction" does not create automatic federal jurisdiction, and requires an independent source of subject matter jurisdiction when such phrase is present in a statute.

The district court should have remanded the matter back to state court as no basis of federal court jurisdiction exists. All acts of the district court here should be vacated as they were in excess of the court's jurisdiction.

VII. STANDARD OF REVIEW AND ARGUMENTS

Standard of Review. Removal is a question of federal subject matter jurisdiction reviewed *de novo*. *See Providence Health Plan v. McDowell*, 385 F.3d 1168, 1171 (9th Cir. 2004*); Schnabel v. Lui*, 302 F.3d 1023, 1029 (9th Cir. 2002). Thus, the denial of a motion to remand a removed case is reviewed *de novo*. *See D-Beam Ltd v. Roller Derby Skates, Inc*., 366 F.3d 972, 974 n.2 (9th Cir. 2004). Even when a party fails to object to removal, this court reviews *de novo* whether the district court has subject matter

jurisdiction. *See Schnabel*, 302 F.3d at 1029; *Campbell v. Aerospace Corp*., 123 F.3d 1308, 1311 (9th Cir. 1997).

Removal jurisdiction statutes are strictly construed against removal. *See Libhart v. Santa Monica Dairy Co*., 592 F.2d 1062, 1064 (9th Cir. 1979). "Federal jurisdiction must be rejected if there is any doubt as to the right of removal in the first instance." *Gaus v. Miles*, 980 F.2d 564, 566 (9th Cir. 1992). "The burden of establishing federal jurisdiction falls on the party invoking removal." *Harris v. Provident Life and Accident Ins. Co*., 26 F.3d 930, 932 (9th Cir. 1994), overruled on other grounds by *Leeson v. Transamerica Disability Income Plan*, 671 F.3d 969, 979 (9th Cir. 2012).

a. The Ninth Circuit, applying Supreme Court precedent, previously determined the phrase "any court of competent jurisdiction" does not, standing alone, confer federal jurisdiction.

The Supreme Court has repeatedly emphasized the phrase "competent jurisdiction" almost always refers to subject-matter jurisdiction. See *Wachovia Bank, Nat'l Ass'n v. Schmidt*, 546 U.S. 303, 316, 126 S.Ct. 941, 163 L.Ed.2d 797 (2006); *United States v. Morton*, 467 U.S. 822, 828, 104

S.Ct. 2769, 81 L.Ed.2d 680 (1984); *Califano v. Sanders*, 430 U.S. 99, 106 n. 6, 97 S.Ct. 980, 51 L.Ed.2d 192 (1977).

In *Califano*, Sanders filed suit in district court against the social security administration for not reopening his administrative claims. The district court dismissed citing it lacked jurisdiction to hear the claim under the Social Security Act. The Seventh Circuit agreed the Social Security Act barred district court review of the denial to reopen. The Seventh Circuit, however, still reversed the dismissal determining that the Administrative Procedure Act ("APA") did confer subject matter jurisdiction upon the district court to review the agency decision. *Certiorari* was granted as the circuits were split over whether or not the APA conferred implicit federal court jurisdiction.

The Supreme Court observed "the actual text of *sec. 10* of the APA nowhere contains an explicit grant of jurisdiction to challenge agency action in the federal courts." *Id.*, at 106. The Court then tried to glean the implicit grant of federal jurisdiction from the APA itself observing:

> *5 U.S.C. sec 702* makes clear that a person wronged by agency action "is entitled to judicial review thereof." But *sec 703* suggests that this

> language was not intended as an independent jurisdictional foundation, since **such judicial review is to proceed "in a court specified by statute" or "in a court of competent jurisdiction." Both of these clauses seem to look to outside sources of jurisdictional authority. Thus, at best, the text of *sec 10* is ambiguous in providing a separate grant of subject-matter jurisdiction.**[2]

Id., at 106, fn. 6; my emphasis.

In *Doe v. Mann*, 415 F.3d 1038 (9th Cir. 2005), the Ninth Circuit applied *Califano* and determined that a reference in a statute to "any court of competent jurisdiction" does not, alone, create federal jurisdiction. In *Doe*, a Native American mother challenged California's authority to terminate her parental rights under the Indian Child Welfare Act ("ICWA"). In 2001, Ms. Doe's parental rights were terminated by the state court. Invoking the ICWA, which provides that a parent "may petition any court of competent

[2] The Supreme Court ultimately disposed of the issue, finding no implicit grant of federal jurisdiction under the APA as *28 USC sec. 1331* was amended to do away with the amount in controversy requirement. Prior to the amendment, lower courts inferred the APA must necessarily grant federal jurisdiction otherwise *sec. 1331* would operate to prevent suits against federal agencies due to the amount in controversy requirement. The Supreme Court noted Congress, when amending *sec. 1331*, did not amend the APA or the Social Security Act leading the Court to further conclude the APA was never intended to confer federal jurisdiction.

jurisdiction to invalidate" a parental rights termination order, Doe sought district court review of the state court's decision.

The Ninth Circuit was partly asked to decide whether it was proper or not for the district court to determine it had jurisdiction under the ICWA to hear Doe's claim as Rooker-Feldman issues were apparent. To answer the question, the Ninth Circuit applied principles from *Califino* noting that a statute's reference to "any court of competent jurisdiction" is not, standing alone, a grant of subject-matter jurisdiction. "Consequently, we must determine whether the federal district court had jurisdiction from an independent source, *28 U.S.C. § 1331*, making it a 'court of competent jurisdiction' that is authorized by *§ 1914* to invalidate certain state court child custody proceedings." 415 F.3d 1038, at 1045.[3]

Supreme Court and Ninth Circuit law clearly says that a statute's reference to "any court of competent jurisdiction" does not confer automatic federal court jurisdiction. An independent source of jurisdiction must still

[3] The Ninth Circuit ultimately found an implied federal cause of action under the ICWA. Accordingly, the Ninth Circuit concluded that it was proper for the district court to entertain Ms. Doe's district court action.

exist. Fannie Mae's "sue and be sued" clause requires an independent source of federal subject matter jurisdiction as the phrase "any court of competent jurisdiction" is contained therein. Fannie Mae's federal charter is legally distinguishable from the Red Cross' federal charter.

b. District courts interpret the phrase "any court of competent jurisdiction" in Fannie Mae's charter as requiring an independent basis for federal subject matter jurisdiction.

In *Rincon del Sol v. Lloyd's of London*, 709 F.Supp.2d 517, 524 (S.D.Tex. 2010), the court reasoned that the language, "of competent jurisdiction," required an independent basis of jurisdiction. The *Rincon* court believes to construe otherwise would render the emphasized language "to be sued in any court of competent jurisdiction, State or Federal," ineffectual as it would eliminate the right to sue Fannie Mae in state court.

In *Knuckles v. RBMG, Inc.*, 481 F.Supp.2d 559 (S.D.W.Va. 2007), the court compared statutory construction in the Red Cross charter to that found in the Fannie Mae charter:

> Under the canons of statutory construction each word in a statute should be given effect and linguistic superfluity avoided. *Scheidler v. Nat'l Org. for Women, Inc.*, 547 U.S. 9, 126 S.Ct. 1264, 164 L.Ed.2d 10 (2006). Accordingly, the phrase "any court of competent jurisdiction, State or Federal," found in Fannie Mae's charter, but not in the charter

> of the Red Cross, must be given effect. For the phrase "any court of competent jurisdiction" to have any meaning it should be read as differentiating between state and federal courts that possess "competent" jurisdiction, *i.e.*, an independent basis for jurisdiction, from those that do not. To conclude, as Fannie Mae suggests, that its charter could be read to confer original federal jurisdiction in all suits in which it is a party, notwithstanding the absence of an independent basis for federal jurisdiction, would effectively eliminate the phrase "of competent jurisdiction" from the charter. Stated differently, were the court to adopt Fannie Mae's reading of its charter, all federal courts would possess jurisdiction, regardless of competency.

Id., at 563.

The *Knuckles* court noted other courts have declined to construe similar "competent jurisdiction" language in the charter for the Secretary of Housing and Urban Development as creating a grant of federal subject matter jurisdiction. *Id*. *See 12 U.S.C. § 1702*;[4] *C.H. Sanders Co. v. BHAP Hous. Dev. Fund Co*., 903 F.2d 114, 118 (2nd Cir. 1990*); "*As we read *12 U.S.C. sec. 1702*, it is plainly no more than a waiver of sovereign immunity and requires another statute to grant jurisdiction in order to make a court competent to hear a case against the Secretary otherwise authorized by *Section 1702*."], *Industrial Indem., Inc. v. Landrieu*, 615 F.2d 644, 647 (5th Cir. 1980);

[4] The statute reads, "[t]he Secretary shall…be authorized, in his official capacity, to sue and be sued **in any court of competent jurisdiction**, State or Federal." [Emphasis added].

Bor–Son Bldg. Corp. v. Heller, 572 F.2d 174, 181 (8th Cir. 1978); *Lindy v. Lynn*, 501 F.2d 1367, 1369 (3rd Cir. 1974).

Other district courts interpreting Fannie Mae's charter have come to the same conclusion. *See Federal National Mortgage Ass'n v. Sealed*, 457 F.Supp.2d 41 (D.D.C. 2006), overruled by *Pirelli*, *infra.; Federal National Mortgage Ass'n v. De–Savineau*, 2010 WL 3397027 (C.D.Cal. 2010); *Federal National Mortgage Ass'n v. Bridgeman*, 2010 WL 5330499 (E.D. Cal. 2010); *State of Nevada v. Countrywide Home Loans Servicing*, LP, 2011 WL 484298 (D.Nev. 2011), (federal jurisdiction existed, but not because of Fannie Mae's "sue and be sued" clause).

District courts note the Federal Home Loan Bank's "sue and be sued" provision as being nearly identical to the provision in Fannie Mae's charter. Those district courts have still rejected any grant of original jurisdiction.[5] *See Federal Home Loan Bank of Chicago v. Bank of America Funding Corp.*, 760 F.Supp.2d 807, 809 (N.D.Ill. 2011); *Federal Home Loan Bank of San Francisco v. Deutsche Bank Securities, Inc.*, 2010 WL 5394742, at 6-8

[5] *12 U.S.C. § 1432(a)*, referred to in the cases, provides for the Federal Home Loan Bank "to sue and be sued, to complain and to defend, in any court of competent jurisdiction, State or Federal..."

(N.D.Cal. 2010*); Federal Home Loan Bank of Seattle v. Deutsche Bank Securities, Inc.*, 736 F.Supp.2d 1283, 1286 (W.D.Wash. 2010); *Federal Home Loan Bank of Seattle v. Barclays Capital, Inc.*, 2010 WL 3662345, at 1-3 (W.D.Wash. 2010).

c. *Red Cross* says that original federal jurisdiction may, but not must, exist if a federally chartered corporation's "sue and be sued" clause mentions the federal courts.

Red Cross analyzed when a federally chartered corporation's charter confers original federal jurisdiction. The Supreme Court concluded "[t]hese cases[6] support the rule that a congressional charter's "sue and be sued" provision **MAY** be read to confer federal court jurisdiction if, but only if, it specifically mentions the federal courts." 505 U.S. at 255; my emphasis. As Judge Brown noted in her opinion concurring in judgment in *Pirelli Armstrong Tire Corp. Retiree Medical Benefits Trust ex rel. Federal Nat. Mortg. Ass'n v. Raines*, 534 F.3d 779 (C.A.D.C. 2008):

[6] Those cases were, *Bank of the United States v. Deveaux*, 5 Cranch 61, 3 L.Ed. 38 (1809); *Bankers Trust Co. v. Texas & Pacific R. Co.*, 241 U.S. 295, 36 S.Ct. 569, 60 L.Ed. 1010 (1916*); Osborn v. Bank of United States*, 9 Wheat. 738, 6 L.Ed. 204 (1824); *D'Oench, Duhme & Co. v. Federal Deposit Ins. Corp.*, 315 U.S. 447, 62 S.Ct. 676, 86 L.Ed. 956 (1942).

> *Red Cross's* use of the word "may" is significant. *Red Cross* announced that a sue-and-be-sued clause mentioning federal courts "*may* be read to confer federal court jurisdiction." *Id*. at 255, 112 S.Ct. 2465 ([Judge Brown's] emphasis added). Importantly, the word "may" is generally "employed to imply permissive, optional or discretional, and not mandatory action." [Citing to], Black's Law Dictionary 979 (deluxe 6th ed.1990); see, e.g., *United States v. Lexington Mill & Elevator Co*., 232 U.S. 399, 411, 34 S.Ct. 337, 58 L.Ed. 658 (1914). Thus, when a sue-and-be-sued clause mentions federal courts, a court is permitted to interpret the clause as conferring jurisdiction, and it should do so only when the statutory text and amendment history support such a reading. *Red Cross* did not command federal courts to shirk their responsibility to examine "the ordinary sense of the language used [and] basic canons of statutory construction," 505 U.S. at 263, 112 S.Ct. 2465, in reaching an ultimate conclusion about the clause's meaning.

534 F.3d at 796.

The amendment history that Judge Brown found compelling was the fact that the "any court of competent jurisdiction" phrase was added to Fannie Mae's charter in 1954. To Judge Brown, Congress would not have taken the time to add such phrase to Fannie Mae's charter unless Congress wanted the phrase to have significant meaning. Judge Brown noted the word "competence," to the time of *Pennoyer v. Neff*, 95, U.S. 714 (1878), referred to subject matter jurisdiction. In other words, Congress must have known the

word's significance when taking the time to add it Fannie Mae's charter. *Id*. 796-798.

IX. CONCLUSION

For the reasons set-forth above, it is respectfully requested that the Ninth Circuit remand this matter to the district court with instructions to remand the underlying case back to the state court, and for the district court judge to vacate all orders and decisions made as they were made in excess of the district court's jurisdiction. Federal court jurisdiction simply is not present here based solely on Fannie Mae's charter act.

X. STATEMENT OF RELATED CASES

The undersigned is assigned pro bono counsel, but believes the following Ninth Circuit cases are related, but were dismissed for one reason or another: 01-55316, 01-56079, 01-56358 , 01-56577, 02-56586, 02-73736, 03-55389, 03-56578, 03-56579, 03-56580, 03-72985, 08-73461. It is believed that this matter was consolidated with Ninth Circuit case no. 10-56649.

XI. CERTIFICATE OF COMPLIANCE AND SERVICE

This brief complies with the type-volume limitation and typeface requirements of *FRAP 32 (a)(5) & (a)(7)(B).* This brief contains no more than 4,000 words and was prepared with Microsoft Word in Times New Roman proportionally spaced size 15 point font. The undersigned certifies that he electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the Appellate CM/ECF system on November 29, 2012. I certify that all participants in this matter are CM/ECF users and that service will be accomplished by the CM/ECF system.

Dated: November 29, 2012

Respectfully submitted,

/s/ Thomas Ogden

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EXHIBIT “I”

Case No. 10-56068

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

BEVERLY HOLLIS-ARRINGTON & CRYSTAL LIGHTFOOT,
Plaintiffs-Appellants,

v.

CENDANT MORTGAGE CORPORATION et al.,
Defendants-Appellees.

Appeal from the United States District Court
for the Central District of California
Case No. 02-6568

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1, defendant Federal National Mortgage Association states that it is a publicly traded corporation chartered by the U.S. Congress. It is under the conservatorship of the Federal Housing Finance Agency pursuant to 12 U.S.C. § 4617(a)(1)-(2). It has no parent company, subsidiary, or affiliate which has outstanding securities in the hands of the public, and no publicly held corporation owns in excess of ten percent of its outstanding stock.

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INTRODUCTION

This appeal arises from the third of five different lawsuits filed in federal and state courts around the country, all involving the same core set of facts and raising essentially the same allegations. In August 1999, plaintiff Beverly Hollis-Arrington took out a loan from Cendant Mortgage Corporation ("Cendant") secured by a deed of trust on property she owned in West Hills, California. The loan was subsequently sold to Federal National Mortgage Association ("Fannie Mae"). Hollis-Arrington missed her first payment on the loan in October 1999, and subsequently failed to make any payments at all. The property was eventually foreclosed and re-sold. In a series of lawsuits, Hollis-Arrington has alleged that this foreclosure was improper, either because Cendant, which remained the servicer on the loan, breached its agreement to grant her a forbearance or because the loan itself was part of an illegal conspiracy to encourage non-creditworthy African-Americans to take out loans that they would not be able to repay. All of Hollis-Arrington's other lawsuits have been dismissed. This one should be too.

Hollis-Arrington (along with her daughter) filed this action against Cendant, Fannie Mae, and Attorneys Equity (the trustee for the property) in California state court after a complaint raising essentially the same allegations was dismissed in California federal district court. Defendants removed to federal court, which dismissed the complaint on res judicata grounds and denied plaintiffs' Rule 60(b)

motion to set aside the judgment. This Court affirmed the district court's decisions in late 2003. Because the complaint was not dismissed as to Attorneys Equity, however, the case technically remained open, and in 2010, plaintiffs filed yet another Rule 60(b) motion and a new appeal to this Court. This Court initially affirmed, but then vacated its order, appointed counsel for plaintiffs, and directed that the parties file new briefs that, in addition to any other issues, addressed whether the case was properly removed to federal court.

Removal to federal court was plainly proper because Fannie Mae's federal charter provides that it can "sue or be sued . . . in any court of competent jurisdiction, State or Federal." As the U.S. Supreme Court held in *American National Red Cross v. S.G.*, 505 U.S. 247 (1992), "sue or be sued" provisions that expressly mention the federal courts establish independent federal subject matter jurisdiction. That rule applies to cases involving Fannie Mae, as the D.C. Circuit held in *Pirelli Armstrong Tire Corp. Retiree Medical Benefits Trust v. Raines*, 534 F.3d 779 (D.C. Cir. 2008).

Plaintiffs' contrary argument is that the district court was not a "court of competent jurisdiction" as to their action against Fannie Mae, and thus the charter's "sue or be sued" provision did not confer federal jurisdiction over the action. In fact, the Supreme Court has previously held that statutory provisions authorizing suit in "any Federal or State court *of competent jurisdiction*" suffice,

without more, to authorize suit in federal district courts, and the phrase "of competent jurisdiction" in the Fannie Mae charter serves multiple functions that have nothing to do with restricting the scope of federal jurisdiction over suits by and against Fannie Mae.

Having properly assumed jurisdiction, the district court also properly dismissed plaintiffs' claims on res judicata grounds because Hollis-Arrington had previously brought essentially the same suit, and that suit was dismissed on the merits. Indeed, this Court affirmed the district court's previous dismissal on res judicata grounds. The district court also properly exercised its discretion when it denied plaintiffs' Rule 60(b) motion to set aside the judgment. As an initial matter, plaintiffs' motion was untimely because they waited over *seven years* to file it. It also fails on the merits because all of the "newly discovered evidence" they cite was, in fact, not newly discovered at all—it was available and cited in the Rule 60(b) motion they previously filed in 2004—and it would not have changed the outcome in the case in any event.

The decisions of the district court should be affirmed.

JURISDICTIONAL STATEMENT

The district court had subject-matter jurisdiction pursuant to 12 U.S.C. § 1723a(a), which provides that Fannie Mae may be "sued . . . in any court of competent jurisdiction, State or Federal."

This Court has jurisdiction under 28 U.S.C. § 1291 because the appeal is from a final judgment entered by the district court on June 11, 2010. Plaintiffs filed their notice of appeal on July 6, 2010.

STATEMENT OF THE ISSUES PRESENTED

1. Whether removal is proper where the defendant's federal charter authorizes it to "sue and be sued, and to complain and defend, in any court of competent jurisdiction, State or Federal."

2. Whether this Court's prior order summarily affirming the district court's motion to dismiss and its denial of plaintiffs' Rule 60(b) motion is "law of the case."

3. Whether the district court properly dismissed plaintiffs' complaint on res judicata grounds, where one of the plaintiffs previously filed a suit raising the same claims against almost the exact same parties and it was dismissed on the merits.

4. Whether the district court properly exercised its discretion in denying plaintiffs' Rule 60(b) motion, where plaintiffs waited roughly seven years after their case was dismissed to file their motion and did not offer newly discovered evidence that was likely to have changed the outcome.

STATEMENT OF THE CASE

Plaintiff Beverly Hollis-Arrington was the owner of real property that was foreclosed upon and subsequently re-sold after she failed to make required loan

payments. She has filed a number of suits in both federal and state court related to the foreclosure of the property. In this case, she and her daughter (to whom she at one point deeded her home) allege, among other things, that defendants conspired to make loans to non-creditworthy African-Americans to induce default and allow Fannie Mae to foreclose on the property. Plaintiffs seek damages and declaratory relief.

A. Background on Fannie Mae

Originally established in 1938 in response to the Great Depression, Fannie Mae was created to fulfill an "important public mission[]," 12 U.S.C. § 4501(1), *viz.*, promoting a vibrant secondary mortgage market and making home ownership more accessible for low and middle-income Americans. National Housing Act Amendments of 1938, Pub. L. No. 75-424, 52 Stat. 8, 23 (1938); 12 U.S.C. §§ 1716-1719; *see* S. Rep. No. 102-282, at 9 (1992) (stating that Fannie Mae was "legislatively chartered for public purposes"). Because this mission was a critical component of federal housing policy, Fannie Mae was constituted as a governmental entity and organized under federal law. 12 U.S.C. § 1716. Its original charter provided that it could "sue and be sued, complain and defend, in any court of law or equity, State or Federal." National Housing Act, Pub. L. No. 73-479, § 301(c)(3), 48 Stat. 1246, 1253 (1934).

In 1954, with the enactment of the Housing Act of 1954, Fannie Mae was converted to a "mixed-ownership corporation," and the "sue-and-be-sued" provision in its charter was amended to provide that it could "sue and be sued, and to complain and defend, in any court of competent jurisdiction, State or Federal." Housing Act of 1954, Pub. L. No. 83-560, § 309(a), tit. II, 68 Stat. 590, 621-22 (1954). Notwithstanding these changes to its structure (and others that followed[1]), its fundamental purpose remained the same: to effectuate federal housing policy by making home ownership more accessible to low and middle-income Americans. *See* S. Rep. No. 102-282, at 25 (noting "the Congressional design in chartering the enterprises as privately owned and managed entities with special, public purposes"); *id.* at 34 (recognizing Fannie Mae's "special relationship with the federal government"); Corporate Governance, 70 Fed. Reg. 17,303, 17,309 (Apr. 6, 2005) (acknowledging Fannie Mae's "unique mission").

Because Fannie Mae is tasked with effectuating federal policies and achieving federal goals, Congress has ensured that Fannie Mae's structure and operations remain subject to federal oversight. When this case was removed to federal court, Fannie Mae was required, among other things, to submit annual

[1] In 1968, Fannie Mae was established as a private shareholder owned corporation, Housing and Urban Development Act of 1968, Pub. L. No. 90-448, § 802(z)-(ee), 82 Stat. 476, 541 (1968), although it remained heavily regulated by the federal government, *see, e.g.*, Federal Housing Enterprises Financial Safety and Soundness Act of 1992, Pub. L. No. 102-550, 106 Stat. 3941 (establishing the OFHEO as Fannie Mae's primary regulator).

reports to both houses of Congress and various federal agencies and offices. 12 U.S.C. § 1723a(d)(3)(A), 1723a(j), 1723a(m)(n). Fannie Mae was also required to meet annual housing goals established by the U.S. Secretary for Housing and Urban Development. *See* 12 U.S.C. §§ 4562-64. And Fannie Mae's prior regulator, the Office of Federal Housing Enterprise Oversight ("OFHEO"), enacted numerous federal regulations pursuant to the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, Pub. L. No. 102-550, 106 Stat. 3941, covering a number of topics from executive compensation to Fannie Mae's capitalization, *see* 12 C.F.R. § 1770.1 (executive compensation); *id.* § 1777.1 (capitalization). Congress expanded the federal government's oversight of Fannie Mae when it passed the Housing and Economic Recovery Act of 2008 ("HERA"), Pub. L. No. 110-289, 122 Stat. 2654 (2008), which among other things, established the Federal Housing Finance Agency ("FHFA") as Fannie Mae's regulator and provided FHFA's Director with the authority to place Fannie Mae into conservatorship or receivership. 122 Stat. at 2662, 2734. FHFA's Director exercised that authority on September 6, 2008 and placed Fannie Mae into conservatorship. Since then, FHFA has enacted a number of regulations similar to those that were in place prior to the conservatorship. For example, Fannie Mae is still required to meet annual housing goals established by its conservator, FHFA. *See* 2012-2014 Enterprise Housing Goals, 77 Fed. Reg. 67,535 (2012). And FHFA

is still required to submit annual reports to Congress regarding various aspects of Fannie Mae's business and performance. *See* 122 Stat. at 2745.

B. Factual Background

In August 1999, Cendant Mortgage Corporation ("Cendant") lent Hollis-Arrington $180,400 secured by a deed of trust on property she owned in West Hills, California. Compl. ¶ 9.[2] Roughly a month later, Cendant sold the loan to Fannie Mae, although it remained the loan's servicer. *Id.* ¶ 10. Fannie Mae subsequently re-sold the loan to Cendant because it failed to meet Fannie Mae's credit standards.

In October 1999, the first monthly payment on the loan was due. Hollis-Arrington failed to make that payment, or any subsequent payment. *Id.* ¶ 12. She asked Cendant for, and was provided, information about programs to cure the default. Hollis-Arrington sought to enter into a forbearance agreement, and alleges that Cendant led her to believe that a forbearance agreement had been approved. *Id.* ¶ 15. Cendant ultimately rejected the application and initiated foreclosure proceedings.

In May 2000, to prevent foreclosure, Hollis-Arrington filed a bankruptcy petition. That petition was dismissed the next month for failure to pay the required filing fees. *See* DE 31-33, No. 00-bk-14478-GM (Bankr. C.D. Cal. 2000). In July

[2] All citations to "Compl." or "DE" (without a corresponding case number) refer to the underlying action giving rise to this appeal.

2000, she filed a second bankruptcy petition, which was again dismissed for failing to pay the required filing fees. This time, the court's dismissal order barred Hollis-Arrington from filing another bankruptcy petition for 180 days. *See* DE 27, 28, No. 00-bk-16423-GM (Bankr. C.D. Cal.).

On September 11, 2000, Hollis-Arrington deeded her home to her daughter, Crystal Lightfoot. *See* Compl. Ex. E, No. 03-cv-02416-TPJ (D.D.C. Nov. 21, 2003). Lightfoot filed her own bankruptcy petition. This petition too was dismissed for failure to make the required payments, and the court barred Lightfoot from filing another bankruptcy petition for 180 days. DE 28, 29, No. 00-bk-18360-AG (Bankr. C.D. Cal. 2000).

Cendant scheduled a new foreclosure sale on November 28, 2000, but continued the sale to January 11, 2001, based on Hollis-Arrington's assurance that she was trying to refinance. Although no refinancing ever occurred, the foreclosure was further delayed by court order in the first lawsuit Hollis-Arrington filed in federal district court in October 2000. *See* DE 25, No. 00-cv-11125-CBM-AJW (C.D. Cal. Jan. 10, 2001); *see also infra* at 10-11. On February 5, 2001, four days after the district court lifted the temporary stay it had granted (DE 44, No. 00-cv-11125-CBM-AJW (C.D. Cal. Feb. 1, 2001), Lightfoot filed a second bankruptcy case, which was dismissed the next month. Lightfoot was again barred

from making a new bankruptcy filing for 180 days. DE 30, 31, No. 01-bk-10910-AG (Bankr. C.D. Cal. 2001).

Lightfoot then transferred 50% of the property back to Hollis-Arrington (Compl. ¶ 102, No. 03-cv-02416-TPJ (D.D.C. Nov. 21, 2003)), who filed her third bankruptcy petition on March 22, 2001. Cendant at that point obtained "in rem" relief from the automatic stay in order to proceed with foreclosure, which was scheduled for June 29, 2001. DE 33, No. 01-12579-GM (Bankr. C.D. Cal.). Despite Hollis-Arrington's attempt to seek a stay in her second suit in federal district court, the foreclosure sale was finally held that day. Compl. ¶¶ 61-72, No. 03-cv-02416-TPJ (D.D.C. Nov. 21, 2003). Harold Tennen and Ed Feldman bought the property at the sale and, through state court action, evicted Hollis-Arrington in September 2001. *Id.* ¶¶ 80-81. They subsequently sold the property to Robert O. Matthews. Compl. ¶ 5.

C. Related Actions

This appeal arises from the third of at least five suits filed by plaintiffs in connection with the foreclosure of the property. In the first suit, which Hollis-Arrington filed against Cendant in the Central District of California on October 18, 2000, she alleged that Cendant had "fraudulently promised to provide her with a forbearance agreement after she fell delinquent but reneged and foreclosed on the property instead." *Hollis-Arrington v. PHH Mortg. Corp.*, 2005 WL 3077853, at

*2 (D.N.J. Nov. 15, 2005). The district court granted Cendant's motion for summary judgment, DE 102, No. 00-cv-11125-CBM-AJW (C.D. Cal. July 15, 2002), and this Court affirmed, *Hollis-Arrington v. Cendant Mortg. Corp.*, 61 F. App'x 462 (9th Cir. 2003) (mem).

In June 2001, while the first case was pending, Hollis-Arrington filed a second action against Cendant, Fannie Mae, and Attorneys Equity National Corporation. This time, her theory was that "Cendant, in a conspiracy with Fannie Mae, sought to make mortgage loans to non-creditworthy black borrowers for the sole purpose of causing the borrowers to default on the loans and enabling Fannie Mae to foreclose and acquire the real property." DE 162, at 3, No. 01-cv-05658 (C.D. Cal. Aug. 29, 2003). In May 2002, the district court dismissed the case, DE 131, at 7, No. 01-cv-05658 (C.D. Cal. May 28, 2002), and this Court affirmed. *PHH Mortg. Corp.*, 2005 WL 3077853, at *2; *see* DE 28, No. 02-56280 (9th Cir. Apr. 17, 2003).

After the district court dismissed Hollis-Arrington's complaint in the second suit, she (along with her daughter, Crystal Lightfoot) filed this case in Los Angeles Superior Court on July 18, 2002. They sued the same parties as in the second action and made the same allegations of a conspiracy to make loans to non-creditworthy borrowers. *Id.* at 3; *PHH Mortg. Corp.*, 2005 WL 3077853, at *3. The district court granted motions by Cendant and Fannie Mae to dismiss on res

judicata grounds, and this Court affirmed. *See infra* at 12-16 (detailing the full procedural history of this litigation).

Hollis-Arrington subsequently filed a fourth action in federal court in the District of Columbia. *Hollis-Arrington v. PHH Mortg. Corp.*, 205 F. App'x 48, 50 (3d Cir. 2006) (per curiam) (discussing No. 03-cv-02416-TPJ (D.D.C. 2003)). The district court granted defendants' motion to dismiss on res judicata grounds, DE 41, No. 03-cv-02416-TPJ (D.D.C. Feb. 17, 2004), and the D.C. Circuit Court of Appeals affirmed, Order, *Hollis-Arrington v. Fannie Mae*, No. 04-5068, at 2 (D.C. Cir. Nov. 15, 2004).

Finally, plaintiffs filed a fifth suit in federal court in New Jersey. *PHH Mortg. Corp.*, 2005 WL 3077853, at *3. The defendants moved to dismiss on a variety of grounds, including res judicata, and the district court granted the motion. *Id.* at *5-12. The Third Circuit Court of Appeals affirmed. *PHH Mortg. Corp.*, 205 F. App'x at 55; *see id.* at 52 ("res judicata bars suit against . . . Fannie Mae").

D. Proceedings Below

As noted above, plaintiffs filed this case in Los Angeles Superior Court after the similar complaint Hollis-Arrington had previously filed in federal district court was dismissed. On August 22, 2002, Fannie Mae removed the case to federal district court. On August 26, 2002, plaintiffs filed an application to remand, which was denied on September 5, 2002.

In late August, while the remand briefing was ongoing, defendants Fannie Mae, Cendant, and Matthews filed motions to dismiss. On February 20, 2003, the district court granted Cendant's and Fannie Mae's motion to dismiss, concluding that all three elements of res judicata were satisfied. First, "[p]laintiffs have already prosecuted two prior actions concerning the same loan process and eventual foreclosure of their property. . . . Thus, the same rights and interests are at issue in the instant case as were adjudicated in the previous actions." OER 1:33 (DE 59, at 8).[3] Second, "the requirement that the earlier actions result in a final judgment on the merits is met" because "[u]nder federal law, final judgments have preclusive effect under res judicata regardless of the pendency of appeal." *Id.* at 34 (DE 59, at 9). Third, the parties were so similar that their interests were adequately represented in the original suit. *Id.* at 34-35 (DE 59, at 10). The court also granted defendants' motion on the alternative ground that plaintiffs' claims were barred by collateral estoppel.

On June 4, 2003, plaintiffs filed a motion to set aside the judgment as to all defendants other than Attorneys Equity, and on August 29, 2003, the district court denied the motion. *Id.* at 46 (DE 79, at 1). Although judgment had not been

[3] Citations to "OER" refer to the Excerpts of Record filed with plaintiffs' original brief. Because the Excerpts of Record are not consecutively paginated, the cited page number refers to the page in the PDF version of the Excerpts of Record. Thus, the citation "OER 1:33" refers to page 33 of the PDF of the first volume of the Excerpts of Record. The citation to the relevant docket entry is included in parentheses, as well.

entered against Attorneys Equity, plaintiffs filed a notice of appeal, and on December 15, 2003, this Court summarily affirmed. SER-7-8;[4] *see* OER 1:56 (DE 89). This case was removed from the district court's active docket and remained dormant until late 2008.

On April 7, 2009, plaintiffs filed a motion in the district court to restore this case to the court's active calendar for the purpose of entering final judgment pursuant to Federal Rule of Civil Procedure 54(b). On October 21, 2009, the district court entered judgment in favor of Cendant, Fannie Mae, and Matthews, "consistent with" its prior order granting the defendants' motions to dismiss. On May 27, 2010, the district court ordered plaintiffs to show cause no later than June 10, 2010 why the action should not be dismissed with prejudice as to Attorneys Equity based on the doctrine of res judicata. On June 11, 2010, the court sua sponte dismissed the claim against Attorneys Equity on res judicata grounds, and entered judgment in favor of Attorneys Equity. Plaintiffs ultimately filed a reply to the court's show cause order later that day.

That same day, plaintiffs moved to set aside the judgment pursuant to Rule 60(b). On September 27, 2010, the district court denied plaintiffs' motion to set aside the judgment. The district court first held that it lacked jurisdiction over the motion because plaintiffs failed to file it within a year after entry of judgment. The

[4] Citations to "SER" refer to the Supplemental Excerpts of Record.

court held that "[a]lthough [it] did not initially enter a judgment on a separate document as required by Federal Rule of Civil Procedure 58(a), Plaintiffs demonstrated their belief that the February 20, 2003 order was a final judgment." OER 1:93 (DE 117, at 7). "Because the parties treated the order of dismissal as a judgment, the Court finds that, for purposes of Rule 60(b)(3), judgment was entered as to these defendants on July 21, 2003, which was 150 days from the date of entry of the February 20, 2003 order of dismissal." *Id.*

The court also rejected plaintiffs' motion on the merits, explaining that "[p]laintiffs have failed to present clear and convincing evidence that Defendants' attorneys perpetrated fraud upon the Court, that the judgment was unfairly procured, or that the evidence was not previously available to Plaintiffs. Indeed, the evidence was clearly discoverable prior to the filing of the Rule 60(b) Motion because the documents are public records and Plaintiffs presented the same facts to the Court more than seven years ago." *Id.* at 94 (DE 117, at 8). The court also rejected plaintiffs' request for "'an independent action for the court to set aside the judgment for "fraud upon the court."'" *Id*. at 95 (DE 117, at 9). Construing the request as one for relief under Rule 60(b)(6), the court held that there was "no basis for this extraordinary relief." *Id.* On September 30, 2010, this Court lifted the stay on the appeal.

Following briefing, this Court issued a memorandum, holding that "[t]he district court did not abuse its discretion by denying plaintiffs' Rule 60(b) motion to set aside the judgment because plaintiffs failed to establish any ground for relief." DE 30, at 2, No. 10-56068 (9th Cir. Jan. 9, 2012). This Court also held that "[t]he district court had removal jurisdiction because state claims filed to circumvent the res judicata impact of a federal judgment may be removed to federal court." *Id.*

On January 20, 2012, plaintiffs petitioned for panel rehearing and rehearing en banc. On April 13, 2012, this Court sua sponte withdrew the memorandum disposition filed on January 9, 2012 and denied as moot plaintiffs' petition for rehearing and rehearing en banc. The Court appointed pro bono counsel for plaintiffs and directed pro bono counsel to file either replacement or supplemental briefing; the Court also provided that defendants could file replacement or supplemental briefs. The Court directed that "[i]n addition to any other issues the parties address in their briefs, they shall address whether the district court had subject matter jurisdiction on the basis of the federal charter of [Fannie Mae]." DE 32, at 2, No. 10-56068 (9th Cir. Apr. 13, 2012).

SUMMARY OF ARGUMENT

I. The district court properly held that the "sue and be sued" provision in Fannie Mae's charter confers federal subject matter jurisdiction. In *American*

National Red Cross v. S.G., 505 U.S. 247 (1992), the Supreme Court held that where a "sue and be sued" provision in a federal charter explicitly mentions federal courts, that provision establishes independent subject matter jurisdiction in the federal courts. That rule plainly applies here. The only difference between Fannie Mae's charter and the one at issue in *American National Red Cross* is that Fannie Mae's charter authorizes suit in "any court *of competent jurisdiction*, state or federal." That is a distinction without a difference. The Supreme Court has held that similar statutory provisions authorize suit in federal district courts, and that phrase in Fannie Mae's charter serves multiple functions having nothing to do with the scope of federal jurisdiction over suits by and against Fannie Mae, as the history of Fannie Mae's charter confirms.

II. This Court should affirm because its prior order summarily affirming the district court's decisions in this case is "law of the case." This Court's prior order necessarily held that the district court properly dismissed plaintiffs' claims on res judicata grounds, and none of the "new" evidence plaintiffs offered in their Rule 60(b) motion merited a change in result. Those are the precise questions at issue in this appeal.

III. The district court properly held that plaintiffs' claims were barred on res judicata grounds because all three criteria are satisfied here: (1) identity of claims, (2) final judgment on the merits, and (3) identity or privity between the parties.

Hollis-Arrington previously brought these same claims in a prior action, which was dismissed on the merits. And the only new party is Hollis-Arrington's daughter, who temporarily owned the property at issue and has precisely the same interests in the litigation as her mother.

IV. The district court did not abuse its discretion in denying plaintiffs' Rule 60(b) motion. To start, plaintiffs' request was untimely. A Rule 60(b) motion must be brought within a "reasonable time," and plaintiffs waited seven years to bring their motion. It was also without merit because the evidence they offered was not new and, in any event, would not have changed the outcome in this case.

STANDARD OF REVIEW

This Court reviews *de novo* a district court's denial of a motion to remand for lack of removal jurisdiction. *See Infuturia Global Ltd. v. Sequus Pharm., Inc.*, 631 F.3d 1133, 1137 (9th Cir. 2011). This Court also reviews *de novo* the district court's dismissal based on res judicata. *See Stewart v. U.S. Bancorp*, 297 F.3d 953, 956 (9th Cir. 2002).

This Court reviews for abuse of discretion a district court's denial of a Rule 60(b) motion. *See SEC v. Worthen*, 98 F.3d 480, 482 (9th Cir. 1996). This Court "may not reverse a district court's exercise of its discretion unless [it has] a definite and firm conviction that the district court committed a clear error of judgment in the conclusion it reached upon weighing the relevant factors." *SEC v.*

Coldicutt, 258 F.3d 939, 941 (9th Cir. 2001). "A district court abuses its discretion if it does not apply the correct law or if it rests its decision on a clearly erroneous finding of material fact." *Id.*

ARGUMENT

I. THE DISTRICT COURT CORRECTLY HELD THAT THE "SUE AND BE SUED" PROVISION IN FANNIE MAE'S CHARTER CONFERS FEDERAL SUBJECT MATTER JURISDICTION

A. The Supreme Court's Decision In *American National Red Cross* Requires Federal Jurisdiction In This Case

1. In *American National Red Cross v. S.G.*, 505 U.S. 247 (1992), the Supreme Court recognized the long-standing rule that governs this case: where a "sue and be sued" provision in a federal charter explicitly mentions federal courts, that provision establishes independent subject matter jurisdiction in the federal courts. Applying that rule, the D.C. Circuit Court of Appeals held that the exact charter provision at issue here—the provision authorizing Fannie Mae "to sue and be sued, and to complain and defend, in any court of competent jurisdiction, State or Federal"—confers federal subject matter jurisdiction, thus making removal appropriate. *Pirelli*, 534 F.3d at 784. The same result should follow here.

American National Red Cross involved a provision in the American Red Cross's charter authorizing it "to sue and be sued in courts of law and equity, State or Federal, within the jurisdiction of the United States." 505 U.S. at 248 (quotations and citation omitted). The question was whether that provision

"confer[red] original jurisdiction on federal courts over all cases to which the Red Cross is a party, with the consequence that the organization is thereby authorized to remove from state to federal court any state-law action it is defending." *Id.* The Supreme Court noted that it did "not face a clean slate" in considering the question. *Id.* at 252. Rather, since the Republic's early days, the Court had on "several occasions . . . consider[ed] whether the 'sue and be sued' provision of a particular federal corporate charter conferred original federal jurisdiction over cases to which that corporation was a party." *Id.* And the critical question in those early cases, the Court emphasized, was whether the "sue and be sued" provision specifically mentioned the federal courts; where it did, the Court held that the provision conferred federal subject matter jurisdiction. *Id.*

The first case in this line was *Bank of United States v. Deveaux*, 9 U.S. (5 Cranch) 61 (1809), which held that a provision authorizing the first Bank of the United States "to sue and be sued, plead and be impleaded, answer and be answered, defend and be defended, in courts of record, or any place whatsoever" did *not* confer independent federal court jurisdiction. This generally stated power to sue and be sued, the Court explained, "is conferred by every incorporating act, and is not understood to enlarge the jurisdiction of any particular court." *Id.* at 85-86. By way of contrast, the Court pointed to a different provision, which subjected the president and directors in their individual capacity to suit and "expressly

authorize[d] the bringing of that action *in the federal or state courts*." *Id.* at 86 (emphasis added). That difference reflected Congress's intention that a generic right to sue "does not imply a right to sue in the courts of the union, unless it be expressed." *Id.*

In *Osborn v. President, Directors & Co. of Bank*, 22 U.S. (9 Wheat.) 738 (1824), the Court highlighted the same distinction in considering the charter of the second Bank of the United States. The second Bank was authorized to "sue and be sued, plead and be impleaded, answer and be answered, defend and be defended, in all State Courts having competent jurisdiction, *and in any Circuit Court of the United States*." *Id.* at 817 (emphasis added). By its reference to suit "'in every Circuit Court of the United States,'" the provision "confer[red] jurisdiction on the Circuit Courts of the United States." *Id.* at 818. Reiterating the contrast drawn in *Deveaux*, the Court observed that the first Bank's charter provision, which merely created "a general capacity in the Bank to sue, without mentioning the Courts of the Union," did not suffice to "give a right to sue in those Courts." *Id.*

Deveaux and *Osborn* together establish "the basic rule" that "a congressional charter's 'sue and be sued' provision may be read to confer federal court jurisdiction if, but only if, it *specifically mentions the federal courts*." *Am. Nat'l Red Cross*, 505 U.S. at 255 (emphasis added); *see id.* at 257 ("The rule established in these cases makes it clear that the Red Cross Charter's 'sue and be sued'

provision should be read to confer jurisdiction."). Under this "basic rule," the Court explained in *American National Red Cross*, a provision that "authoriz[es] the organization to sue and be sued in federal courts" is a provision that "extends beyond a mere grant of general corporate capacity to sue," and for that reason "suffices to confer federal jurisdiction." *Id.* at 257.

2. Plaintiffs make two arguments that *American National Red Cross* does not compel the same result here. Neither has merit.

First, they argue that *American National Red Cross* merely permits, but does not mandate, that Fannie Mae be allowed to remove where the charter provision explicitly references federal courts. They point specifically to "'*Red Cross*'s use of the word 'may,'" which they argue "is generally 'employed to imply permissive, optional or discretional, and not mandatory action.'" Pls. Br. 20 (quoting *Pirelli*, 534 F.3d at 796). But elsewhere in the opinion, *American National Red Cross* makes clear that express reference to the federal courts in a "sue and be sued" provision mandates that the federal entity be permitted to remove: "The rule established in these cases makes it clear that the Red Cross Charter's 'sue and be sued provision' *should be read* to confer jurisdiction." 505 U.S. at 257 (emphasis added); *cf.* Br. for United States as Amicus Curiae Supporting Pet'rs, *Am. Nat'l Red Cross v. S.G.*, 1992 U.S. S. Ct. Briefs LEXIS 115, at *5-6 ("This Court's decisions have established *a clear rule* that congressional charters provide for

original jurisdiction in the federal courts whenever they specifically grant a right to sue and be sued in federal courts." (emphasis added)). As the Court explained, it was important to respect this rule because Congress relied on it in enacting charters for federal entities like the Red Cross. *See Am. Nat'l Red Cross*, 505 U.S. at 264 ("We would be loath to repudiate such a longstanding and settled rule, on which Congress has surely been entitled to rely . . . ."); *see also Bankers Trust Co. v. Tex. & Pac. Ry. Co.*, 241 U.S. 295, 304 (1916) (holding that a provision authorizing the Texas and Pacific Railway Company to "sue and be sued, plead and be impleaded, defend and be defended, in all courts of law and equity within the United States" did not confer federal subject matter jurisdiction because "[i]t was in the light of [the differing precedents in the first and second Bank charters] and of the resulting difference in their interpretation that Congress framed the act [chartering the railway company]").

Second, plaintiffs argue that Fannie Mae's charter provision differs meaningfully because of its reference to suit in "any court *of competent jurisdiction*." Pls. Br. 20 (emphasis added). According to plaintiffs, the phrase "of competent jurisdiction" effectively drains the explicit reference to "federal" courts of the import ascribed to such references in *Osborn* and *American National Red Cross*, because it must be read to permit suit in federal court only if the court *otherwise* has "competent" subject-matter jurisdiction.

Plaintiffs grossly overread the phrase. The Supreme Court has previously held that statutory provisions authorizing suit in "any Federal or State court of competent jurisdiction" suffice, without more, to authorize suit in federal district courts. In *Breuer v. Jim's Concrete of Brevard, Inc.*, 538 U.S. 691 (2003), for example, the Court held that an individual could sue his former employer in federal court for violations of the Fair Labor Standards Act because the statute provided that suit under the Act "'may be maintained . . . in any Federal or State court of competent jurisdiction.'" *Id.* at 694; *see Kimel v. Fla. Bd. of Regents*, 528 U.S. 62, 73-74 (2000). And as the D.C. Circuit explained in *Pirelli*, the phrase "of competent jurisdiction" in the Fannie Mae charter, in particular, serves multiple functions that have nothing to do with restricting the scope of federal jurisdiction over suits by and against Fannie Mae. *Pirelli*, 534 F.3d at 785.

To start, the phrase "help[s] clarify that . . . litigants in state courts of limited jurisdiction must satisfy the appropriate jurisdictional requirements." *Id.* at 785; *see Osborn*, 22 U.S. at 817 (addressing statute that conferred authority on the Bank of the United States to "sue and be sued . . . in all State Courts having competent jurisdiction"). It also makes clear that "litigants, whether in federal or state court, must establish that court's *personal* jurisdiction over the parties." *Pirelli*, 534 F.3d at 785 (emphasis added). Indeed, the term "competent jurisdiction" is commonly used in law to refer to personal jurisdiction. *See, e.g.*, *Blackmar v. Guerre*, 342

U.S. 512, 516 (1952) ("If the Commission's action is reviewable under § 1009, it is reviewable only in a court of 'competent jurisdiction.' . . . [I]t must follow that review must be in that district where the Commissioners can be served." (internal footnote omitted)); *Action Embroidery Corp. v. Atl. Embroidery, Inc.*, 368 F.3d 1174, 1178-79 (9th Cir. 2004) ("the question of a federal court's competence to exercise personal jurisdiction over a defendant is distinct from the question of whether venue is proper"); *SunCoke Energy Inc. v. MAN Ferrostaal Aktiengesellschaft*, 563 F.3d 211, 213 (6th Cir. 2009) ("the parties have treated the contract forum-selection clause for equitable relief—calling for adjudication in 'any court of competent jurisdiction'—to mean any court with personal jurisdiction"); *Drake v. Whaley*, 355 F. App'x 315, 317 (11th Cir. 2009) ("because it lacked personal jurisdiction over the Defendants, the District Court for the Eastern District of New York was not a competent court of jurisdiction").[5]

[5] Plaintiffs thus err in arguing—following Judge Brown's concurrence in *Pirelli*—that "the phrase 'competent jurisdiction' almost always refers to subject-matter jurisdiction." Pls. Br. 12 (citing *Wachovia Bank, N.A. v. Schmidt*, 546 U.S. 303, 316 (2006), and *United States v. Morton*, 467 U.S. 822, 828 (1984)); *see Pirelli*, 534 F.3d at 797 (Brown, J., concurring) (citing *Morton*, 467 U.S. at 828, for the proposition that "'[a]s far back as *Pennoyer v. Neff*, . . . , [courts] drew a clear distinction between a court's "competence" and its jurisdiction over the parties'"). Not only is the argument contrary to the cases cited in text, it is also unsupported by the cases cited by plaintiffs. In *Wachovia Bank*, for example, the Court simply noted that "[s]ubject-matter jurisdiction . . . concerns a court's competence to adjudicate a particular category of cases." 546 U.S. at 316. And, in *Pennoyer v. Neff*, 95 U.S. 714 (1878), the Court merely stated that "there must be a tribunal competent by its constitution . . . to pass upon the subject-matter of the

The phrase also establishes that "litigants relying on the 'sue-and-be-sued' provision can sue in federal district courts but not necessarily in all federal courts." *Pirelli*, 534 F.3d at 785. Thus, a litigant may not appear in a federal court that otherwise imposes additional jurisdictional requirements, such as the Court of International Trade or the Court of Claims. *Cf. Am. Nat'l Red Cross*, 505 U.S. at 267 (Scalia, J., dissenting) (explaining that under the majority's view Red Cross "could appear . . . as a party in a third-party action in the Court of International Trade and in an action before the United States Claims Court" because it "is clearly granted the *capacity* to sue and be sued in *all* federal courts" (internal citations omitted)). With respect to the Court of Claims, in particular, the "of competent jurisdiction" language also ensures that claims exceeding $10,000 are not *required* to be heard in the Court of Claims. *Compare S. Windsor Convalescent Home, Inc. v. Mathews*, 541 F.2d 910, 914 (2d Cir. 1976) ("Since the claim involved in this case is directed against the United States, seeks solely a money judgment, and exceeds the threshold sum of $10,000, jurisdiction lies exclusively with the Court of Claims."), *with Ferguson v. Union Nat'l Bank*, 126 F.2d 753, 756 (4th Cir. 1942) (interpreting a "sue-and-be-sued" provision with the "of competent jurisdiction" language and concluding that "[i]t could hardly have

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suit." *Id.* at 733. In fact, in *Morton*, although the Court recognized that "competent jurisdiction," "usually . . . refer[s] to subject-matter jurisdiction," the Court noted that it "has also been used on occasion to refer to a court's jurisdiction over the defendant's person." 467 U.S. at 828.

been intended by Congress that suits for over $10,000 against the Administrator could be brought in any state court of general jurisdiction, but in the federal jurisdiction only in the Court of Claims"); *Portsmouth Redevelopment & Hous. Auth. v. Pierce*, 706 F.2d 471, 475 (4th Cir. 1983) (reaffirming *Ferguson*).[6]

Moreover, when the Supreme Court decided *American National Red Cross*, it was well aware that its decision would have implications for other "sue and be sued" provisions like Fannie Mae's. In its brief, the Red Cross noted that "entities besides the Red Cross will be affected by this Court's choice among the proposed modes of analysis" and cited provisions containing the "of competent jurisdiction" language. Br. for Pet'r, *Am. Nat'l Red Cross v. S.G.*, 1992 U.S. S. Ct. Briefs LEXIS 220, at *48. Specifically, it noted that the Solicitor General had "advised [the Supreme] Court" that similar language in another federal charter conferred federal subject matter jurisdiction: 'Plainly, Section 1702 [of the National Housing

[6] Indeed, this explanation makes sense of the difference between Fannie Mae's charter and that of its sibling, Freddie Mac, which omits the "of competent jurisdiction" language. In her concurrence in *Pirelli*, Judge Brown argued that this difference supported her view that that the language was added to Fannie Mae's charter to remove federal subject matter jurisdiction. 534 F.3d at 799 (Brown, J., concurring). But concerns that claims involving Fannie Mae might otherwise have been forced into the Court of Claims explains this difference: Freddie Mac was "originally created as a private entity" and thus "Congress likely would not have been concerned that, absent the 'of competent jurisdiction' language, Freddie Mac cases could be funneled only to the Court of Claims rather than to federal district courts, which was a potential concern in 1954 when Congress revised the Fannie Mae statute for that then-governmental entity." *Id.* at 787 n.4.

Act], by authorizing suit "in any court of competent jurisdiction, State or Federal," provides a basis for district court jurisdiction . . .'" *Id.*

There is, in sum, no legally meaningful distinction between the "sue or be sued" provision in *American National Red Cross* and the provision at issue here. What matters is that both make an express reference to suits in federal court. Under the longstanding rule running from *Deveaux* and *Osborn* through to *American National Red Cross* and *Pirelli*, that reference suffices to establish federal jurisdiction, and hence authorize removal.

B. The History Of Fannie Mae's Charter Makes Clear That Congress Intended To Authorize Federal Subject Matter Jurisdiction Over Claims Against Fannie Mae

The history of the Fannie Mae charter provision confirms Congress's intent, already expressed in its plain language, to create federal subject matter jurisdiction over suits by and against Fannie Mae.

Under the original 1934 statute, Fannie Mae was a governmental entity tasked with effectuating important federal policies, and Congress thus wanted to ensure it would have access to the federal courts. Toward that end, Congress provided that Fannie Mae could "sue and be sued, complain and defend, in any court of law or equity, State or Federal." Pub. L. No. 73-479, § 301(c)(3), 48 Stat. 1246, 1253 (1934). As discussed above, Congress at that time would have

understood this language to unambiguously confer federal subject matter jurisdiction. *See supra* at 19-22.

Twenty years later, with the enactment of the Housing Act of 1954, Congress revamped the original statute. Among other things, Congress added the phrase "of competent jurisdiction" to the sue-and-be-sued clause. Pub. L. No. 83-560, tit. II, 68 Stat. 590, 612-22 (1954). The theory, then, is that Congress sought by this amendment to revoke the federal court jurisdiction that previously existed. Yet there is no indication that Congress was troubled by the scope of existing jurisdiction, and there is no reason to think that it would have been. Indeed, although Fannie Mae was converted to a "mixed-ownership corporation" at that time, it continued to enjoy a special relationship with the federal government, and its fundamental objective remained to fulfill federal policy goals. More significant, even if Congress were troubled by the scope of existing jurisdiction, there is no reason Congress would have understood the language it added to have restricted that jurisdiction. To the contrary, when Congress acted in 1954, courts of appeals had recently examined "sue-and-be-sued" provisions with the exact same "of competent jurisdiction" language and concluded that they conferred federal subject matter jurisdiction. *See Seven Oaks, Inc. v. Fed. Hous. Admin.*, 171 F.2d 947, 948 (4th Cir. 1948) ("[The statute] provides not only that the agency may be sued but also in what courts suit may be instituted. The exact language of the

statute is: 'The Administrator shall, in carrying out the provisions of this title and titles II and III, be authorized, in his official capacity, to sue and be sued in any court of competent jurisdiction, State or Federal.' There is no more ambiguity in the language used and no more reason to restrict its meaning than there was the meaning of the language permitting suit in any United States District Court in the Railway Labor Act." (internal citation omitted)); *Ferguson v. Union Nat'l Bank*, 126 F.2d at 756-57 ("We think there can be no question but that the court had jurisdiction of the cause. It is specifically provided that the Administrator in his official capacity may 'sue and be sued in any court of competent jurisdiction, State or Federal.'"); *see also George H. Evans & Co. v. United States*, 169 F.2d 500, 502 (3d Cir. 1948). Plaintiffs cite no court that had so much as suggested otherwise.

As the D.C. Circuit pointed out in *Pirelli*, it would have made no sense for Congress in 1954 to "negate automatic federal jurisdiction" by such an indirect device as the phrase "of competent jurisdiction." 534 F.3d at 786. "If Congress in 1954 did not want to continue to confer federal jurisdiction in Fannie Mae cases, it logically would have omitted the word 'Federal' from the statute, not attempted a bank shot by adding the words 'of competent jurisdiction.'" *Id.* Indeed, Congress did exactly that in the same year it added the "of competent jurisdiction" language to Fannie Mae's charter, deleting the word "Federal" from the "sue-and-be-sued" provision of the Federal Savings and Loan Insurance Corporation ("FSLIC")

statute. Pub. L. No. 83-560, § 501(1), 68 Stat. 590, 633 (1954) (amending Pub. L. No. 73-479, § 402(c)(4), 48 Stat. 1246, 1256 (1934)). "The fact that Congress chose to keep that all-important word in the Fannie Mae statute but to delete it from the FSLIC statute is compelling evidence that Fannie Mae's 'sue-and-be-sued' provision was meant to ensure continuing federal jurisdiction in Fannie Mae cases." *Pirelli*, 534 F.3d at 787.

C. The Cases Cited By Plaintiffs Do Not Defeat Federal Jurisdiction In This Case

In the face of *American National Red Cross* and *Pirelli*, plaintiffs rely on cases addressing the "of competent jurisdiction" language in vastly different contexts. Their principal authority is *Califano v. Sanders*, 430 U.S. 99 (1977), which has no application here. In *Califano*, the Court considered whether § 10 of the APA granted the federal courts jurisdiction to consider challenges to agency action. Section 10 of the APA provides that "[a] person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof," and that "[t]he form of proceeding for judicial review is the special statutory review proceeding relevant to the subject matter in a court specified by statute or, in the absence or inadequacy thereof, any applicable form of legal action . . . in a court of competent jurisdiction." 5 U.S.C. §§ 702, 703.

The Court in *Califano* concluded that § 10 did not confer automatic federal subject matter jurisdiction, but there are obvious differences between this case and *Califano*. First, the phrase there did *not expressly refer to federal courts*. Under the *Deveaux-Osborn-Red Cross* rule, the provision would not create federal jurisdiction. But where, as here, the language does refer to federal courts, federal jurisdiction is established.

Second, as the *Califano* Court explained, the phrase "of competent jurisdiction" in APA § 10 is used in a provision that is not about *creating* judicial jurisdiction at all: "[E]ven the advocates of jurisdiction under the APA acknowledge that there is no basis for concluding that Congress, in enacting § 10 of the APA, actually conceived of the Act in jurisdictional terms." *Califano*, 430 U.S. at 106. The context of the provision "suggests that this language was not intended as an independent jurisdictional foundation, since such judicial review is to proceed 'in a court specified by statute' or 'in a court of competent jurisdiction.' Both of these clauses seem to look to outside sources of jurisdictional authority." *Id.* at 106 n.6. Here, by contrast, "sue or be sued" provisions like the Fannie Mae charter provision have long been construed as creating independent federal court jurisdiction. In other words, in *Califano*, the "of competent jurisdiction" language was attached to a statutory provision that was not intended to confer jurisdiction of any kind; here, it is.

Third, *Califano* did not involve a federally-charted corporation, like Fannie Mae. As this Court has already recognized, "[t]he Court's holding in *Red Cross* applies specifically to 'sue and be sued' provisions in charters for federally-chartered corporations." *K.V. Mart Co. v. United Food & Commercial Workers Int'l Union*, 173 F.3d 1221, 1224 (9th Cir. 1999) (per curiam). "Federally-chartered corporations . . . are entirely defined by federal law," *id.* at 1225, and it is thus especially important that they be able to access the federal courts.

Plaintiffs err equally in relying on *Doe v. Mann*, 415 F.3d 1038 (9th Cir. 2005). The provision in that case stated that "[a]ny Indian child who is the subject of any action for foster care placement or termination of parental rights under State law, any parent or Indian custodian for whose custody such child was removed, and the Indian child's tribe may petition any court of competent jurisdiction to invalidate such action." 25 U.S.C. § 1914. Relying heavily on *Califano*, this Court held that "§ 1914's reference to 'any court of competent jurisdiction' *alone* does not create subject-matter jurisdiction in the federal district court." *Doe*, 415 F.3d at 1045 (emphasis added). That is precisely the point: if Fannie Mae's charter provision merely authorized suit in "any court of competent jurisdiction," that reference "alone" would not suffice to create federal subject-matter jurisdiction under the *Deveaux-Osborn-Red Cross* rule. But Fannie Mae's charter

provision goes farther, specifically authorizing suit in federal courts, which does suffice under that rule. *Doe* says nothing at all about that kind of provision.[7]

Finally, plaintiffs rely on a series of district court cases that have addressed Fannie Mae's charter and similar language in the charter of the Federal Home Loan Bank. Pls. Br. 16-18. The analysis in these cases is simply unpersuasive. *Rincon del Sol v. Lloyd's of London*, 709 F. Supp. 2d 517 (S.D. Tex. 2010), and *Knuckles v. RBMG, Inc.*, 481 F. Supp. 2d 559 (S.D. W. Va. 2007), for example, both rely principally on the argument that interpreting the "sue and be sued" provision to confer independent federal subject matter jurisdiction would render the "of competent jurisdiction" language superfluous. *Rincon*, 709 F. Supp. 2d at 524; *Knuckles*, 481 F. Supp. 2d at 563. But, as explained above, interpreting Fannie Mae's charter to confer federal subject matter jurisdiction does not render the "of competent jurisdiction" language superfluous at all. *See supra* at 24-27.

[7] Plaintiffs also mention in passing older cases in which courts of appeals had held that 12 U.S.C. § 1702, which authorizes the Secretary of Housing & Urban Development "to sue and be sued in any court of competent jurisdiction, State or Federal," does not confer federal subject matter jurisdiction. *See* Pls. Br. 17 (citing *C.H. Sanders Co. v. BHAP Hous. Dev. Fund Co.*, 903 F.2d 114, 118 (2d Cir. 1990); *Indus. Indem., Inc. v. Landrieu*, 615 F.2d 644, 647 (5th Cir. 1980)); *Bor-Son Bldg. Corp. v. Heller*, 572 F.2d 174, 181 (8th Cir. 1978); *Lindy v. Lynn*, 501 F.2d 1367, 1369 (3d Cir. 1974)). Those cases all pre-date *American National Red Cross*, however, and do not even acknowledge the long line of earlier Supreme Court cases holding that "sue-and-be-sued" provisions that reference federal courts generally provide federal subject-matter jurisdiction.

These courts also took the curious position that Congress's decision "to use substantially different language" in amending Fannie Mae's charter seven years after adopting the Red Cross charter indicated that Congress intended different federal jurisdictional consequences. *Rincon*, 709 F. Supp. 2d at 525. But as explained, the language Congress used in the Fannie Mae amendment was not "substantially different" in any meaningful sense; it was instead identical to provisions federal appellate courts had recently construed as conferring federal subject matter jurisdiction. *See supra* at 29-30. As noted, if Congress had actually intended to restrict the jurisdiction already conferred by Fannie Mae's original "sue and be sued" provision, the "substantially different language" to use would have been to delete the reference to "State or federal" courts, thereby easily eliminating automatic federal subject matter jurisdiction under already-existing Supreme Court precedent. Trying to achieve that result by retaining the express reference to federal courts while adding the "of competent jurisdiction" phrase would be a ridiculous "bank shot" with exactly no support in precedent existing at the time. *Pirelli*, 534 F.3d at 786. The other district court cases on which plaintiffs rely (Pl. Br. 17-19) all involve the same flawed reasoning.

The text, history, and sound judicial constructions of the Fannie Mae charter provision all make clear that it creates federal jurisdiction over this action and therefore supports its removal.

II. THIS COURT SHOULD AFFIRM BECAUSE ITS PRIOR ORDER SUMMARILY AFFIRMING THE DISTRICT COURT'S DECISIONS IN THIS CASE IS "LAW OF THE CASE"

In this appeal, plaintiffs ask this Court to review the district court's order dismissing their claims and denying their Rule 60(b) motion. Plaintiffs have previously asked this Court to review orders resolving the exact same issues, and this Court has already rejected plaintiffs' arguments on the merits. This Court's prior order is "law of the case," and there is no reason for this Court to disturb its ruling now.

The "law of the case doctrine" is designed "to promote the efficient operation of the courts." *Hall v. City of L.A.*, 697 F.3d 1059, 1067 (9th Cir. 2012). "It generally precludes a court from reconsidering an issue decided previously [either explicitly or by necessary implication] by the same court or by a higher court in the identical case." *Id.* Thus, under the "law of the case" doctrine, "'one panel of an appellate court will not as a general rule reconsider questions which another panel has decided on a prior appeal in the same case.'" *Hegler v. Borg*, 50 F.3d 1472, 1475 (9th Cir. 1995) (quoting *Merritt v. Mackey*, 932 F.2d 1317, 1320 (9th Cir. 1991)). Although the doctrine is discretionary, this Court has observed that "a prior decision should be followed unless (1) the decision is clearly erroneous and its enforcement would work a manifest injustice, (2) intervening

controlling authority makes reconsideration appropriate, or (3) substantially different evidence was adduced at a subsequent trial." *Id.*

Law of the case doctrine plainly applies here. In 2003, plaintiffs appealed the district court's orders dismissing their claims against Cendant, Fannie Mae, and Mathews on res judicata grounds and denying their first Rule 60(b) motion. This Court "summarily affirm[ed] the district court's orders," concluding that "[a] review of the record and appellant's response indicates that the questions raised in this appeal are so insubstantial as not to require further argument." SER-8. Although this Court did not discuss the reasons for its decision, it necessarily held that the district court properly dismissed plaintiffs' claims on res judicata grounds, and that none of the "new" evidence in plaintiffs' Rule 60(b) motion (which they repeat here) merited a change in the result. These are the precise questions at issue in this appeal, and there is no reason for this Court to answer them differently now than it did nearly a decade ago.

III. THE DISTRICT COURT PROPERLY DISMISSED PLAINTIFFS' CLAIMS ON RES JUDICATA GROUNDS

This Court's prior order is not just law of the case, it is legally correct: plaintiffs' claims are barred by res judicata. Just as plaintiffs now seek to re-litigate issues previously litigated and decided, this entire suit was simply an attempt to re-litigate in state court claims that had already been litigated and rejected in federal court.

Res judicata "'bars litigation in a subsequent action of any claims that were raised or could have been raised in the prior action.'" *Owens v. Kaiser Found. Health Plan, Inc.*, 244 F.3d 708, 713 (9th Cir. 2001) (quoting *W. Radio Servs. Co. v. Glickman*, 123 F.3d 1189, 1192 (9th Cir. 1997)). "The doctrine is applicable whenever there is '(1) an identity of claims, (2) a final judgment on the merits, and (3) identity or privity between parties.'" *Id.* As the district court held, all three criteria are satisfied here.

First, to determine whether there is an "identity of claims," this Court considers four factors: "(1) whether rights or interests established in the prior judgment would be destroyed or impaired by prosecution of the second action; (2) whether substantially the same evidence is presented in the two actions; (3) whether the two suits involve infringement of the same right; and (4) whether the two suits arise out of the same transactional nucleus of facts." *Turtle Island Restoration Network v. U.S. Dep't of State*, 673 F.3d 914, 917-18 (9th Cir. 2012). The "'most important'" of these factors is the fourth, *id.* at 918, and the inquiry is "essentially the same as whether the claim could have been brought in the first action." *United States v. Liquidators of European Fed. Credit Bank*, 630 F.3d 1139, 1151 (9th Cir. 2011); *see Turtle Island*, 673 F.3d at 918 ("where claims arise from the same factual circumstances, a plaintiff must bring all related claims

together or forfeit the opportunity to bring any omitted claim in a subsequent proceeding").

Here, plaintiffs' claims not only *could* have been brought in the prior action, they *were* brought in that action. In this case, just as in the previous two, plaintiffs "challenge[d] Defendants' conduct in connection with the process of Arrington's loan application and the eventual foreclosure of residential property. . . . Plaintiffs' claims allege that the conduct of the defendants in processing the loan and the foreclosure sale were improper and invalid." OER 1:33 (DE 59, at 8); *see id.* (the "same rights and interests are at issue in the instant case as were adjudicated in the previous actions").[8] Thus, the "identity of claims" factors are readily satisfied: the two suits arise out of the same nucleus of facts and involve infringement of the same right, and defendants' interests in the finality of the prior litigation would be impaired by this action.

Second, there was a final judgment on the merits. Final judgment on the merits is "synonymous" with "'dismissal with prejudice.'" *Hells Canyon Pres. Council v. U.S. Forest Serv.*, 403 F.3d 683, 686 (9th Cir. 2005). And a "dismissal for failure to state a claim under Rule 12(b)(6) is a 'judgment on the merits' to

[8] Plaintiffs did allege new causes of action and added the additional factual allegation that Cendant "improperly substituted a trustee before the foreclosure sale" (OER 1:33 & nn.4-5 (DE 59, at 8 & nn.4-5)), but plaintiffs offer no reason to think that those additions meaningfully changed the complaint, or could not have been brought in the prior actions.

which res judicata applies." *Stewart v. U.S. Bancorp*, 297 F.3d 953, 957 (9th Cir. 2002). In the second action, the district court dismissed Hollis-Arrington's claims against all defendants as a matter of law or for failure to state a claim, and this Court affirmed the district court's decision. *See* SER-1 (entry of judgment); SER-2-6 (judgment and memorandum affirming district court). That dismissal is a judgment on the merits.

Third, there was identity or privity between the parties. "'Privity'—for purposes of applying the doctrine of res judicata—is a legal conclusion 'designating a person so identified in interest with a party to former litigation that he represents precisely the same right in respect to the subject matter involved.'" *United States v. Schimmels*, 127 F.3d 875, 881 (9th Cir. 1997). "[W]hen two parties are so closely aligned in interest that one is the virtual representative of the other, a claim by or against one will serve to bar the same claim by or against the other." *Irwin v. Mascott*, 370 F.3d 924, 929 (9th Cir. 2004) (quotation omitted).

Because Fannie Mae and Hollis-Arrington were parties to the prior proceedings, the only privity question is whether Crystal Lightfoot was in privity with Hollis-Arrington. She was: she is Hollis-Arrington's daughter, resided in the home that is the subject of this dispute, was temporarily the owner of the property, and her interests in the litigation are precisely the same as her mother's. That relationship easily suffices to establish privity. *See Trevino v. Gates*, 99 F.3d 911,

924 (9th Cir. 1996) (privity existed between woman and her grandmother where the "interests of [the woman] and her grandmother are so similar that [the woman's] grandmother virtually represented [her] in [the prior action]").

Because all three elements of res judicata exist here, the district court properly dismissed plaintiffs' claims on res judicata grounds, as this Court previously recognized.

IV. THE DISTRICT COURT DID NOT ABUSE ITS DISCRETION IN DENYING PLAINTIFFS' RULE 60(b) MOTION

This Court should also affirm the district court's denial of plaintiffs' Rule 60(b) motion because it is yet another attempt to re-litigate issues that have already been litigated and decided multiple times over. Under Federal Rule of Civil Procedure 60(b), "the court may relieve a party or its legal representative from a final judgment, order, or proceeding" where, under Rule 60(b)(2), there is "newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial" or, under Rule 60(b)(3), there is "fraud . . . misrepresentation, or misconduct by an opposing party." Fed. R. Civ. P. 60(b)(2), (3). "A motion under Rule 60(b) must be made within a reasonable time—and for reasons (1), (2), and (3) no more than a year after the entry of the judgment or order of the date of the proceeding." *Id.* R. 60(c)(1). District courts "lack[] discretion to bend the one-year limit." *McKnight v. Neven*, 366 F. App'x 841, 843 (9th Cir. 2010); *see Warren v. Garvin*, 219 F.3d 111, 114 (2d Cir. 2000)

("[t]he limitations period [in Rule 60] is 'absolute'" (quoting 12 James Wm. Moore et al., Moore's Federal Practice § 60.65[2][a], at 60-200 (3d ed. 1997)).

To prevail under Rule 60(b)(2), the moving party must show that the "newly discovered" evidence was not in its "possession at the time of trial" and could not have been "discovered with reasonable diligence," and that the "newly discovered" evidence would likely have changed the outcome of the case. *Coastal Transfer Co. v. Toyota Motor Sales, U.S.A.*, 833 F.2d 208, 212 (9th Cir. 1987). To prevail under Rule 60(b)(3), the moving party must "'prove by clear and convincing evidence that the verdict was obtained through fraud, misrepresentation, or other misconduct and the conduct complained of prevented the losing party from fully and fairly presenting the defense.'" *Casey v. Albertson's Inc.*, 362 F.3d 1254, 1260 (9th Cir. 2004) (quoting *De Saracho v. Custom Food Mach., Inc.*, 206 F.3d 874, 880 (9th Cir. 2000)). The fraud must "not be discoverable by due diligence before or during the proceeding" and must be "materially related to the submitted issue." *Pac. & Arctic Ry. & Navigation Co. v. United Transp. Union*, 952 F.2d 1144, 1148 (9th Cir. 1991).

Here, plaintiffs' request for Rule 60 relief fails both because it is untimely and because plaintiffs have failed to satisfy the requirements of either Rule 60(b)(2) or (3).

A. The District Court Properly Held That Plaintiffs' Rule 60(b) Motion Was Untimely

As noted above, a motion under either Rule 60(b)(2) or (3) must be made within a "reasonable time" and, in any event, no later than "a year after the entry of the judgment or order of the date of the proceeding." Fed. R. Civ. P. 60(c). "'What constitutes 'reasonable time' depends upon the facts of each case, taking into consideration the interest in finality, the reason for delay, the practical ability of the litigant to learn earlier of the grounds relied upon, and prejudice to the other parties.'" *Lemoge v. United States*, 587 F.3d 1188, 1196-97 (9th Cir. 2009) (quotation omitted).

Here, the district court granted Fannie Mae's motion to dismiss on February 20, 2003. Plaintiffs did not file this motion until June 11, 2010—over seven years later. That delay was unreasonable, to say the least. As the district court noted, plaintiffs could have filed many years earlier because "the documents are public records and Plaintiffs presented the same facts to the Court more than seven years ago." OER 1:94 (DE 117, at 8). Moreover, given that this Court already affirmed the district court's motion to dismiss, defendants had every reason to rely on the finality of that decision. Plaintiffs have offered no reason to disrupt that finality now. Indeed, plaintiffs' only argument on appeal was that the Rule 60(b) motion was filed within one year of judgment. Pls. Original Br. 17 ("Adjudication of Attorneys Equity (for the purpose of a rule 60(b) motion) was not complete until

6/11/2010. It was that judgment which was tantamount to final adjudication of this case. Appellants rule 60(b) motion was filed on 9/17/2010, well within the one year time frame to consider the motion as timely."). But even if that were right,[9] it provides no excuse for plaintiffs' failure to file within a reasonable time. "The one-year period represents an extreme limit, and the motion will be rejected as untimely if not made within a 'reasonable time' even though the one-year period has not expired." Federal Practice & Procedure § 2866. Plaintiffs' motion was exceedingly untimely, and that is alone sufficient basis to affirm the district court's decision.

[9] The district court held that it was not right and that it "lack[ed] jurisdiction" to consider the motion "due to the expiration of the one-year time period." OER 1:93 (DE 117, at 7). As the court explained, "[b]ecause the parties treated the order of dismissal as a judgment, the Court finds that, for purposes of Rule 60(b)(3), judgment was entered as to these defendants on July 21, 2003, which was 150 days from the date of entry of the February 20, 2003 order of dismissal. Therefore, Plaintiffs should have sought relief for alleged fraud committed by Defendants in procuring the dismissal of the action by July 21, 2004, which was one year from the date on which the judgment would have been entered pursuant to Federal Rule of Civil Procedure 58." *Id.* (internal citation omitted). This Court need not decide whether plaintiffs' motion was filed outside the one-year time period because either way, the delay was completely unreasonable. *Amoco Overseas Oil Co. v. Compagnie Nationale Algerienne de Navigation ("C.N.A.N.")*, 605 F.2d 648, 656 (2d Cir. 1979) ("Although Judge Tenney was incorrect in his determination that the Rule 60(b)(1) motion was filed over a year after judgment, his ultimate holding that the motion was untimely can be founded upon the alternative requirement that motions under the Rule be made within 'a reasonable time.'").

B. The District Court Did Not Abuse Its Discretion When It Denied Plaintiffs' Rule 60(b) Motion

As noted above, to satisfy the requirements of Rule 60(b), the moving party must present new evidence that could not have been discovered prior to the entry of judgment and that would likely change the outcome of the case. Here, plaintiffs failed to make that showing. Indeed, as the district court explained, plaintiffs previously filed a motion to set aside the judgment based on the same evidence identified in this motion. OER 1:94 (DE 117, at 8). Even at that time, the district court concluded that the evidence on which plaintiffs relied "could have been discovered through the exercise of diligence prior to the entry of judgment." *Id.* at 50 (DE 79, at 50). "The documents are public recordations available to members of the public that seek their production. Additionally, plaintiffs' own submission of the documents as printouts from Lexis-Nexis indicate that, prior to entry of judgment in this proceeding, plaintiff could have obtained copies of these documents." *Id.* In fact, according to the district court, plaintiff "had this information since the filing of [the] case." *Id.* at 50 n.1 (DE 79, at 50 n.1).

The district court also held that "production of the alleged new evidence would not have changed the outcome of the case." *Id.* at 94 (DE 117, at 8); *see id.* at 50-51 (DE 79, at 50-51) ("the Court finds that production of these documents would not have changed the Court's finding that defendants were entitled to dismissal of plaintiff's claims in this action"). Indeed, plaintiffs do not

meaningfully argue otherwise in either their original brief or their supplemental brief. *See, e.g.*, *Martinez-Serrano v. INS*, 94 F.3d 1256, 1259 (9th Cir. 1996) ("Issues raised in a brief that are not supported by argument are deemed abandoned.").

This Court affirmed the district court's denial of plaintiffs' first Rule 60(b) motion nearly ten years ago. SER-7-8. It should affirm the denial of this one now.

CONCLUSION

For the foregoing reasons, the judgment should be affirmed.

Respectfully submitted,

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EXHIBIT “J”

No. 14-

IN THE

Supreme Court of the United States

CRYSTAL LIGHTFOOT
AND BEVERLY HOLLIS-ARRINGTON,

Petitioners,

v.

CENDANT MORTGAGE CORP. D/B/A PHH MORTGAGE, FANNIE MAE, ROBERT O. MATTHEWS AND ATTORNEYS EQUITY NATIONAL CORP.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

The congressional charter of the Federal National Mortgage Association ("Fannie Mae") grants it the power "to sue and to be sued, and to complain and to defend, in any court of competent jurisdiction, State or Federal." 12 U.S.C. § 1723a(a).

The questions presented are:

(1) whether the phrase "to sue and be sued, and to complain and to defend, **in any court of competent jurisdiction**, State or Federal" in Fannie Mae's charter confers original jurisdiction over every case brought by or against Fannie Mae to the federal courts; and

(2) whether the majority's decision in *Am. Nat'l Red Cross v. S.G.*, 505 U.S. 247 (1992) (5-4 decision), should be reversed.

PARTIES TO THE PROCEEDING

Petitioners, who were Plaintiffs-Appellants below, are Crystal Lightfoot and Beverly Hollis-Arrington.

Respondents, who were Defendant-Appellees below, are Cendant Mortgage Corporation, doing business as PHH Mortgage; Fannie Mae; Robert O. Matthews; and Attorneys Equity National Corporation.

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PETITION FOR A WRIT OF CERTIORARI

Petitioners Crystal Lightfoot and Beverly Hollis-Arrington submit this petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit.

OPINIONS BELOW

The Court of Appeals for the Ninth Circuit affirmed the district court's denial of Petitioners' motion to remand to state court and dismissal of Petitioners' claims in an opinion reported at *Lightfoot v. Cendant Mortgage Corp.*, 769 F.3d 681 (9th Cir. 2014). The United States District Court decision denying Petitioners' motion to remand to state court is unreported. (Pet'r App. D at 43a-44a.)

JURISDICTION

The Court of Appeals for the Ninth Circuit entered judgment on October 2, 2014. (Pet'r App. B at 3a-40a.) That day Petitioners filed a timely petition for rehearing *en banc*. The Court of Appeals for the Ninth Circuit denied Petitioners' petition for rehearing *en banc* on November 20, 2014. (Pet'r App. 1a-2a) This Court's jurisdiction is timely invoked under 28 U.S.C. § 1254(1).

RELEVANT STATUTORY PROVISIONS

The appendix reproduces selected provisions from Federal National Mortgage Association Charter Act, as amended, 12 U.S.C. § 1716 *et seq.* Specifically, the appendix contains 12 U.S.C. § 1717(a) and 12 U.S.C. § 1723a(a) in their entirety. (Pet'r App. F, G.) The portion of 12 U.S.C. § 1717(a) that is most relevant to this matter is as follows:

> On September 1, 1968, the body corporate described in the foregoing paragraph shall cease to exist in that form and is hereby partitioned into two separate and distinct bodies corporate, each of which shall have continuity and corporate succession as a separated portion of the previously existing body corporate, as follows:
>
> One of such separated portions shall be a body corporate without capital stock to be known as Government National Mortgage Association (hereinafter referred to as the "Association"), which shall be in the Department of Housing and Urban Development…
>
> The other such separated portion shall be a body corporate to be known as Federal National Mortgage Association (hereinafter referred to as the "corporation")…The corporation shall have succession until dissolved by Act of Congress. It shall maintain its principal office in the District of Columbia or the metropolitan area thereof and shall be deemed, for purposes of jurisdiction and venue in civil actions, to be a District of Columbia corporation.

12 U.S.C. § 1717(a)(2)(A)-(B).

The portion of 12 U.S.C. § 1723a(a) that is most relevant to this matter is as follows:

> Each of the bodies corporate named in section 1717(a)(2) of this title shall have power to…sue

> and to be sued, and to complain and to defend, in any court of competent jurisdiction, State or Federal, but no attachment, injunction, or other similar process, mesne or final, shall be issued against the property of the Association or against the Association with respect to its property…

12 U.S.C. § 1723a(a).

STATEMENT OF THE CASE

In 2002, Appellants filed suit against Appellees in California state court. There is no dispute that Appellants' underlying claims are all state law claims stemming from a real property foreclosure matter. Appellee Fannie Mae, thereafter, removed the matter to the United States District Court for the Central District of California. (Pet'r App. E at 45a-49a.) All other Appellees concurrently joined in Fannie Mae's removal of the action. Fannie Mae's sole basis of removal was under a belief that its congressionally created charter, 12 U.S.C. § 1723a, conferred automatic federal jurisdiction. (Pet'r App. E at 47a.) That statute says Fannie Mae has authority "to sue and be sued, and to complain and defend, *in any court of competent jurisdiction*, State or Federal." 12 U.S.C. § 1723a(a) (emphasis added). Fannie Mae cited this Court's decision in *Am. Nat'l Red Cross v. S.G. & A.E.* ("*Red Cross*"), 505 U.S. 247 (1992), in support of its position that the "sue and be sued" provision in its federal charter confers original and automatic federal jurisdiction over all cases to which Fannie Mae is a party.

After removal, Appellants immediately sought a remand in district court arguing Fannie Mae's charter did not confer automatic federal question jurisdiction. The district court denied Appellants' application to remand on September 5, 2002. (Pet'r App. D at 43a-44a.) The matter lingered in U.S. District Court for the Central District of California for many years. Final judgment was entered pursuant to Fed. R. Civ. Pro. 58, by the district court judge on June 11, 2010. Appellants timely filed a notice of appeal on July 6, 2010, within 30 days of entry of final judgment.

On January 9, 2012, the United States Court of Appeal for the Ninth Circuit issued a decision affirming the District Court's denial of Appellants' motion to remand on the basis that the District Court had removal jurisdiction over state claims filed to circumvent the res judicata impact of a federal judgment. Notably, however, Fannie Mae did not remove the case on that basis. On April 13, 2012, the Ninth Circuit, *sua sponte*, withdrew its memorandum disposition and ordered the parties to submit briefing on the issue of whether the district court had subject matter jurisdiction on the basis of Fannie Mae's federal charter.

On October 2, 2014, the Ninth Circuit held that Fannie Mae's federal charter conferred original jurisdiction in the federal courts, applying the rule this Court articulated in *Red Cross—i.e.*, that "a congressional charter's 'sue and be sued' provision may be read to confer federal court jurisdiction if, but only if, it specifically mentions the federal courts." (Pet'r App. B at 3a-40a.)

REASONS FOR GRANTING THE PETITION

The courts of appeal are divided on the frequently reoccurring question of whether a congressional charter permitting a governmental entity to "sue and be sued… in any court of competent jurisdiction, State or Federal" confers original jurisdiction over such suits with the federal courts. Relying on this Court's decision in *Red Cross*, the Ninth Circuit, in its decision below, and the D.C. Circuit have held that this provision confers original jurisdiction. On the other hand, the Second, Third, Fifth, and Seventh Circuits have held that this language does not confer original jurisdiction. District courts have frequently grappled with this issue, but continue to reach opposite conclusions. Thus, while some cases proceed in federal court, others are remanded to state court, where the rules of civil procedure are often more favorable to the plaintiff. This Court's interpretation of Fannie Mae's congressional charter is of significant importance because the congressional charters of other governmental entities have the same or substantially similar language to that of Fannie Mae's. Petitioners request that this Court grant this petition for a writ of certiorari to review this "important question of federal law that has not been, but should be settled by this Court." *See* U.S. S. Ct. R. 10(a), (c).

I. Certiorari Should Be Granted Because Federal Courts are Fractured on the Question of Original Subject Matter Jurisdiction for Cases in which Fannie Mae is a Party.

A. The Ninth Circuit's Decision is Inconsistent with United States Supreme Court Precedent.

In its decision below, the Ninth Circuit held that Fannie Mae's congressional charter, permitting Fannie Mae to "sue and be sued…in any court of competent jurisdiction, State or Federal," confers original jurisdiction in the federal courts. *See Lightfoot*, 769 F.3d at 690. The Ninth Circuit applied this Court's holding in *Red Cross*, which was that "a congressional charter's 'sue and be sued' provision may be read to confer federal court jurisdiction if, but only if, it specifically mentions the federal courts." *Id.* at 684. However, the Ninth Circuit's decision is inconsistent with this Court's precedent.

As an initial matter, the Ninth Circuit's decision is inconsistent with this Court's determination that Congress intended the language at issue to waive governmental immunity from suit, not to confer jurisdiction. For example, in *Keifer & Keifer*, this Court analyzed the congressional charter of the Reconstruction Finance Corporation, which granted the authority to "sue and be used, to complain and to defend, in any court of competent jurisdiction, State or Federal," *see Keifer & Keifer v. Reconstruction Fin. Corp.*, 306 U.S. 381, 392-96 (1939)—the *exact* language at issue in Fannie Mae's congressional charter, *see* 12 U.S.C. § 1723a(a). This Court noted that, at that time, Congress had provided for no less than forty corporations that discharged governmental functions, all

of which contained the authority to "sue and be sued." *See Keifer & Keifer*, 306 U.S. at 390 & n.3. This Court held that the language at issue reflected Congress's intent to waive governmental immunity from suit; it did not hold that the language also conferred jurisdiction. *Id.* at 392-96. Accordingly, when Congress permits an entity to "sue and be sued…in any court of competent jurisdiction, State or Federal," such a provision is intended to waive governmental immunity. *See also Fed. Hous. Admin. v. Burr*, 309 U.S. 242 (1940) (holding that the provision "sue and be sued in any court of competent jurisdiction, State or Federal" was a waiver of governmental immunity that should be liberally construed, allowing the Federal Housing Administration to be sued for garnishment for moneys due to an employee under state law).

The Ninth Circuit's rationale is also inconsistent with this Court's decision in *Shoshone Mining Co. v. Rutter*, 177 U.S. 505 (1900). In *Shoshone Mining*, this Court revisited the question of whether "a suit brought in support of an adverse claim under §§ 2325 and 2326 of the Revised Statutes was not a suit arising under the laws of the United States in such a sense as to confer jurisdiction on a Federal court regardless of the citizenship of the parties." 177 U.S. at 505. In the relevant statutes, Congress authorized a litigant to proceed "in a court of competent jurisdiction." *Id.* at 506. This Court held that this provision did not, by itself, confer original jurisdiction in the federal courts; instead, the federal courts could only exercise jurisdiction over such a suit if there was an independent basis for federal jurisdiction. *Id.* at 506-7. The Court explained as follows:

> [Congress] did not in express language prescribe either a Federal or a state court, and did not provide for exclusive or concurrent jurisdiction. If it had intended that the jurisdiction should be vested only in the Federal courts, it would undoubtedly have said so. *If it had intended that any new rule of demarcation between the jurisdiction of the Federal and state courts should apply, it would likewise undoubtedly have said so. Leaving the matter as it did, it unquestionably meant that the competency of the court should be determined by rules theretofore prescribed in respect to the jurisdiction of the Federal courts*... [I]t would be true that if the amount in controversy was not in excess of $2,000, or if the parties were not citizens of different states, and the suit was not one arising under the Constitution or laws of the United States, the Federal courts could not take jurisdiction.

Id. (emphasis added). Pursuant to *Shoshone Mining Co.*, when Congress intends any new "rule of demarcation" between the jurisdiction of the federal and state courts, Congress must so state. Otherwise, federal courts must have an independent basis for jurisdiction—*i.e.*, diversity of citizenship or federal question jurisdiction.

The only distinction between Fannie Mae's congressional charter and the provision at issue in *Shoshone Mining Co.* is the inclusion of the phrase "State or Federal." *Compare Shoshone Mining Co.*, 177 U.S. at 506, *with* 12 U.S.C. § 1723a(a). Fannie Mae's congressional charter allows for suit "in any court of competent

jurisdiction, *State or Federal*." 12 U.S.C. § 1723a(a). Here, just as this Court in *Shoshone Mining Co.* held that the phrase "in any court of competent jurisdiction" did not require a new "rule of demarcation" between the jurisdiction of the federal and state courts, neither does the addition of the phrase "State and Federal." On its face, Fannie Mae's congressional charter treats state and federal courts equally in that the phrase "in any court of competent jurisdiction" modifies both "State" and "Federal." Thus, under the rationale of *Shoshone Mining Co.*, state and federal courts must have an independent source of jurisdiction. The Ninth Circuit's decision that including the phrase "State or Federal" confers original jurisdiction with the federal courts is inconsistent with this Court's holding in *Shoshone Mining Co.*

In its decision below, the Ninth Circuit found that Congress must have intended the inclusion of the phrase "State or Federal" to confer original jurisdiction with the federal courts. *See Lightfoot*, 769 F.3d at 685-86. However, the Ninth Circuit's rationale ignores the likelihood that Congress retained the phrase "State or Federal" out of concern that the congressional charter might be read to limit jurisdiction to either the federal courts or the state courts in light of this Court's decisions in cases such as *State of Minnesota v. United States*, 305 U.S. 382 (1939), and *Kennecott Copper Corp. v. State Tax Comm'n*, 327 U.S. 573 (1946). *Cf. Red Cross*, 505 U.S. at 275 (Scalia, J., dissenting) ("The addition of the words 'State or Federal' eliminates the possibility that the language 'courts of law and equity within the jurisdiction of the United States' that was contained in the original charter… might be read to limit the grant of capacity to sue in federal court.").

In *State of Minnesota*, the State brought suit in state court to take, pursuant to state law, nine allotted parcels of land, some of which belonged to the Grand Portage Indian Reservation, which was formed under federal law. 305 U.S. at 383. In determining whether the state court had jurisdiction to hear the case, the Court explained that "Congress has provided generally for suits against the United States in *federal courts*. And it rests with Congress to determine not only whether the United States may be sued, but in what courts the suit may be brought." *Id.* at 388 (emphasis added). This Court held that, because Congress did not specifically state that such a suit could be brought in state court, the state court did not have jurisdiction to hear the case. *Id.* at 388-89.

Seven years later, in *Kennecott Copper*, this Court analyzed a state statute that permitted taxpayers who wished to challenge a decision of the tax commission or to recover any taxes deemed unlawful to "bring an action in any court of competent jurisdiction," without reference to *either* state or federal courts. 327 U.S. at 574-575, 575 n.1. Federal jurisdiction was claimed under diversity of citizenship and because the controversy arose under the Constitution and the laws of the United States. *Id.* at 576. This Court rejected petitioners' argument that "any court of competent jurisdiction" should be construed to grant jurisdiction to both state and federal courts, and reiterated its rule that "clear declaration of a state's consent to suit against itself in the federal courts on fiscal claims is required." *Id.* at 577-78. Accordingly, because the statute did not specifically state that suit could be brought in federal court, this Court held that the federal courts did not have jurisdiction. *Id.* at 579-80.

Read together, *State of Minnesota* and *Kennecott Copper* could be interpreted to mean that, in order for Congress to ensure that a litigant is able to bring a case in either state or federal court, it *must* include the phrase "in any court of competent jurisdiction, *State or Federal*." Because the Ninth Circuit's decision is inconsistent with this Court's precedent, Petitioners request that this Court grant this petition to resolve this issue.

B. This Court Has Never Directly Addressed Whether Fannie Mae's Congressional Charter Confers Original Jurisdiction with the Federal Courts.

This Court has been repeatedly called upon to determine whether the "sue and be sued" provision in various congressional charters confer original jurisdiction with the federal courts. However, this Court has never analyzed whether Fannie Mae's congressional charter—which states that Fannie Mae may "sue and to be sued… in any court of competent jurisdiction, State or Federal," 12 U.S.C. § 1723a(a)—or any other charter with substantially similar language confers original jurisdiction in the federal courts to every case in which Fannie Mae (or other governmental entity) is a party. Thus, Petitioners request that this Court grant their petition for a writ of certiorari to resolve this issue and create uniformity in the application of the law.

This Court analyzed the first Bank's congressional charter in *Bank of the United States v. Deveaux*, 9 U.S. (5 Cranch) 61 (1809), *rev'd on other grounds*, *Louisville, C. & C.R. Co. v. Letson*, 43 U.S. (1 How.) 497, 555-56 (1844). This Court held that the Bank's charter, which stated

that the Bank was "made able and capable in law…to sue and be sued…in courts of records, or any other place whatsoever," did not confer jurisdiction on the federal courts to adjudicate suits brought by the Bank. Instead, this Court held that the provision "is not understood to enlarge the jurisdiction of any particular court, but to give a capacity to the corporation to appear, as a corporation, in any court which would, by law, have cognizance of the cause, if brought by individuals. *If jurisdiction is given by this clause to the Federal courts, it is equally given to all courts having original jurisdiction, and for all sums, however small they may be.*" *Id.* at 85-86 (emphasis added).

Fifteen years later, this Court analyzed the second Bank's congressional charter, which stated that the Bank was "made able and capable, in law…to sue and be sued… in all state courts having competent jurisdiction, and in any Circuit Court of the United States." *Osborn v. Bank of the United States*, 22 U.S. (1 Wheat.) 738 (1824). In *Osborn*, this Court held that the congressional charter conferred jurisdiction on federal circuit courts because, in contrast with the first Bank's charter which granted the power to sue and be sued in all courts generally, the second Bank's charter granted the power to sue and be sued in *particular* federal courts (*i.e.*, Circuit Courts of Appeal), indicating Congress's intent to grant original jurisdiction to Circuit Courts of Appeal. *Id.* at 818-19.

In *Bankers' Trust Co. v. Texas & Pac. Ry. Co.*, 241 U.S. 295 (1916), nearly a century later, this Court interpreted the Texas & Pacific Railway Company's congressional charter, which stated that the company was able to "sue and be sued…in all courts of law and equity within the

United States." This Court held that the Congressional charter did not confer original jurisdiction with the federal courts for the following reason:

> Congress was not then concerned with the jurisdiction of courts, but with the faculties and powers of the corporation which it was creating; and evidently all that was intended was to render this corporation capable of suing and being sued by its corporate name in any court of law or equity—*Federal, state, or territorial*—whose jurisdiction as otherwise competently defined was adequate to the occasion. Had there been a purpose to take suits by and against the corporation out of the usual jurisdictional restrictions relating to the nature of the suit, the amount in controversy, and the venue, it seems reasonable to believe that *Congress would have expressed that purpose in altogether different words.*

Id. at 303 (emphasis added).

Then, in *D'Oench, Duhme*, while analyzing the question of whether a federal court in a non-diversity action must apply the conflict-of-laws rules of the forum state, this Court noted that the FDIC's Congressional charter granted original jurisdiction with the federal courts. *See D'Oench, Duhme & Co. v. Fed. Deposit Ins. Corp.*, 315 U.S. 447, 455-56 (1942). This Court relied on the plain language in the Banking Act of 1933, which granted the FDIC the power "to sue and be sued…in any court of law or equity, State or Federal," as well as the plain language in the 1935 amendment, which included

the provision that "All suits of a civil nature at common law or in equity to which the [FDIC] shall be a party *shall be deemed to arise under the laws of the United States*." *Id.* at 455-56 & n.2. This Court also cited the Report of the Senate Committee on Banking and Currency, which makes clear that the purpose of this amendment was to confer original federal jurisdiction in FDIC cases. *Id.* at 455 & n.2; *see also S.G. v. Am. Nat. Red Cross*, 938 F.2d 1494, 1499 (1st Cir. 1991) ("The Report of the Senate Committee on Banking and Currency makes clear that the purpose of this amendment was to confer original federal jurisdiction in F.D.I.C. cases.") (citing S.Rep. No. 1007, 74th Cong., 1st Sess. 5), *rev'd on other grounds*, *Red Cross*, 505 U.S. 247.

Most recently, this Court analyzed the Red Cross's congressional charter, which states that the Red Cross is able "to sue and be sued in courts of law and equity, State and Federal, within the jurisdiction of the United States." *See Red Cross*, 505 U.S. at 248; *see also* 36 U.S.C. § 300105. This Court, in a 5-4 decision, held that its precedent established a rule that "a congressional charter's 'sue and be sued' provision may be read to confer federal court jurisdiction if, but only if, it specifically mentions the federal courts." *Red Cross*, 505 U.S. at 255. Thus, the inclusion of the word "Federal" in the Red Cross congressional charter conferred original jurisdiction in the federal courts. *Id.* at 257.

Fannie Mae's congressional charter is significantly distinguishable from the charters this Court has already analyzed. Whereas the Red Cross's congressional charter allows it "to sue and be sued in courts of law and equity, State and Federal, within the jurisdiction of the United

States," 36 U.S.C. § 300105, Fannie Mae's congressional charter requires it "to sue and be sued…in *any court of competent jurisdiction*, State and Federal," 12 U.S.C. § 1723a(a) (emphasis added). This Court has never directly analyzed whether this exact provision requires litigants to have an *independent* source of subject matter jurisdiction in order to proceed in state or federal court.

C. The Circuit Courts of Appeals are Divided as to Whether a Congressional Charter Permitting an Entity to "Sue and Be Sued…in any Court of Competent Jurisdiction, State or Federal" Confers Original Jurisdiction with the Federal Courts.

The Ninth Circuit and the D.C. Circuit have held that, when a congressional charter permits an entity to sue and be sued *in any court of competent jurisdiction*, state or federal, Congress intended to confer original jurisdiction over every case to which that entity is a party to the federal courts. On the other hand, the Second Circuit, Third Circuit, Fifth Circuit, and Seventh Circuit have held that such language allows the entity to be sued in any state or federal court that has an *independent* source of subject matter jurisdiction.

Prior to the Ninth Circuit's decision in this case, the only Circuit Court of Appeals to address the issue of whether Fannie Mae's congressional charter conferred original jurisdiction with the federal courts was the D.C. Circuit. *See Pirelli Armstrong Tire Corp. Retiree Med. Benefits Trust ex rel. Fed. Nat. Mortgage Ass'n v. Raines*, 534 F.3d 779 (D.C. Cir. 2008). In a split decision, the D.C. Circuit Court held that "there is federal jurisdiction

because the Fannie Mae 'sue and be sued' provision expressly refers to the federal courts in a manner similar to the Red Cross statute." *Id.* at 784. The court found that the 1954 amendment to Fannie Mae's congressional charter, in which Congress added the phrase "of competent jurisdiction," did not evidence Congress's intent to require an *independent* source of federal jurisdiction. *Id.* at 785-87. Rather, the court found that the phrase "of competent jurisdiction" clarifies that litigants in state courts of limited jurisdiction must satisfy appropriate jurisdictional requirements, that litigants in state and federal court must establish that court's personal jurisdiction of the parties, that litigants in federal court cannot bring their suit in *any* federal court, but should bring suit in federal district court, and that federal district courts have jurisdiction even over cases that might otherwise be heard in the Court of Federal Claims. *Id.* at 785.

Judge Brown's concurring decision found that the majority decision misunderstood the *Red Cross* decision to mean that the "sue and be sued" clause creates jurisdiction simply because it mentions the federal courts. *Id.* at 795 (Brown, J., concurring). Instead, Judge Brown interpreted *Red Cross* to mean that mentioning federal courts is necessary but not always sufficient to confer original jurisdiction with the federal courts. *Id.* at 795-96. Judge Brown distinguished Fannie Mae's congressional charter from that of the Red Cross based on the inclusion of the phrase "of competent jurisdiction" contained Fannie Mae's charter. *Id.* at 796-99. Judge Brown noted that the term "of competent jurisdiction" modifies the reference to both state and federal courts, and concluded that the provision allows Fannie Mae to be sued in a state or federal court that has an *independent* source of subject matter jurisdiction. *Id.* at 796-99.

Consistent with Judge Brown's concurring opinion in *Pirelli*, the Second Circuit, Third Circuit, Fifth Circuit, and Seventh Circuit have held that congressional charters, such as Fannie Mae's, in which Congress permitted the entity to sue and be sued in "any court of competent jurisdiction, State or Federal," do not confer original jurisdiction with the federal courts. The Second Circuit analyzed the congressional charter for Housing and Urban Development ("HUD"), which is nearly identical to Fannie Mae's in that it authorized the Secretary to "sue and be sued in any court of competent jurisdiction, State or Federal." *See C.H. Sanders Co. v. BHAP Hous. Dev. Fund Co.*, 903 F.2d 114, 118 (2d Cir. 1990); *see also* 12 U.S.C. § 1702. The Second Circuit held that the congressional charter was "only a waiver of sovereign immunity and not an independent grant of jurisdiction." *Id.* The Third Circuit similarly held that HUD's "sue and be sued" provision—which is nearly identical to Fannie Mae's—"makes the Secretary suable in his official capacity in a court which is *otherwise* of competent jurisdiction." *See Lindy v. Lynn*, 501 F.2d 1367, 1369 (3d Cir. 1974) (emphasis added). In evaluating a contract claim based on state law, the Third Circuit remanded the case to state court because it was "clear that the district court is not otherwise of competent jurisdiction to entertain this lawsuit." *Id.* The Fifth Circuit also held that HUD's "sue and be sued" provision "is plainly no more than a waiver of sovereign immunity and *requires another statute to grant jurisdiction* in order to make a court competent to hear a case against the Secretary otherwise authorized by Section 1702." *See Indus. Indem., Inc. v. Landrieu*, 615 F.2d 644, 647 (5th Cir. 1980) (emphasis added). The Fifth Circuit has reaffirmed this unambiguous holding in subsequent cases. *See, e.g.*, *Lomas & Nettleton Co. v. Pierce*, 636 F.2d 971, 973 (5th Cir. 1981).

The Seventh Circuit Court of Appeals analyzed the congressional charter for the Department of Veteran Affairs, which permitted the Secretary to "sue and be sued… in any court of competent jurisdiction, State or Federal." *See W. Sec. Co., a subsidiary of Universal Mortgage Corp. v. Derwinski*, 937 F.2d 1276, 1279-80 (7th Cir. 1991); *see also* 38 U.S.C. § 3720(a)(1). The Seventh Circuit held that the congressional charter "is better read as a waiver of sovereign immunity than as a grant of jurisdiction," and that it "emphatically does not mean that it could have been filed in federal district court instead, for federal jurisdiction is statutory and [the 'sue and be sued' provision] is not a grant of jurisdiction." *Id.* at 1279.

With its decision below, the Ninth Circuit has rejected the interpretation of the Second, Third, Fifth and Seventh Circuit and adopted the D.C. Circuit's view that the statutory language permitting an entity to "sue and be sued…in any court of competent jurisdiction, State or Federal" confers original jurisdiction with the federal courts. Because the Circuit Courts of Appeals are split as to their interpretation of the language contained in Fannie Mae's congressional charter, this Court should grant this Petition to resolve the conflict.

D. The District Court Decisions Interpreting the Language Contained in Fannie Mae's Congressional Charter Lack Uniformity.

Some district courts, relying primarily on the bright-line rule stated by this Court in *Red Cross*, have held that Fannie Mae's federal charter confers original jurisdiction with the federal courts. *See, e.g.*, *Jeong v. Fed. Nat'l Mortgage Ass'n*, No. A-14-CA-920-SS, 2014 WL 5808594,

at *2 n.1 (W.D. Tex. Nov. 7, 2014); *Fed. Home Loan Bank of Boston v. Ally Fin., Inc.*, No. 11–CV–10952, 2012 WL 769731, at *1–3 (D. Mass. Mar. 9, 2012); *Griffin v. Fed. Nat'l Mortgage Ass'n, Inc.*, No. 2:10-cv-00306-TJW-CE, 2010 WL 5535618, at *1-2 (E.D. Tex. Dec. 9, 2010); *Allen v. Wilford & Geske*, No. 10-4747, 2010 WL 4983487, at *2 (D. Minn. Dec. 2, 2010); *In re Fannie Mae 2008 Sec. Litig.*, No. 08 Civ. 7831, 2009 WL 4067266, at *3 (S.D.N.Y. Nov. 24, 2009); *Grun v. Countrywide Home Loans, Inc.*, No. 03–CV–0141, 2004 WL 1509088, at *2 (W.D. Tex. July 1, 2004); *Connelly v. Fed. Nat'l Mortgage Ass'n*, 251 F. Supp. 2d 1071, 1072-73 (D. Conn. 2003); *C.C. Port, Ltd. V. Davis-Penn Mortgage Co.*, 891 F. Supp. 371, 372 (S.D. Tex. 1994); *Peoples Mortgage Co., Inc. v. Fed. Nat'l Mortgage Ass'n*, 856 F. Supp. 910, 917 (E.D. Pa. 1994).

However, even in light of this Court's decision in *Red Cross* and the D.C. Circuit's decision in *Pirelli*, the district courts have split on this question. Many district courts have explicitly adopted the reasoning of Judge Brown's concurring decision in *Pirelli*. *See, e.g.*, *Kennedy v. Fed. Nat'l Mortgage Ass'n*, No. 13–CV–203, 2014 WL 3905593, at *6 (E.D.N.C. Aug. 11, 2014) (acknowledging that Judge Brown's decision has been "widely-praised"); *Fed. Home Loan Bank of Indianapolis v. Banc of Am. Mortgage Sec., Inc.*, No. 10–CV–1463, 2011 WL 2133539, at *2 (S.D. Ind. May 25, 2011) (adopting Judge Brown's "well-reasoned" concurring decision); *Fed. Home Loan Bank of Chicago v. Banc of Am. Funding Corp.*, 760 F. Supp. 2d 807, 809 (N.D. Ill. 2011) (describing Judge Brown's concurring decision as "powerful" and adopting its reasoning). In fact, the majority of the district courts to consider this issue have held that the language contained in Fannie Mae's charter does not confer original jurisdiction. *See, e.g.*,

Warren v. Fed. Nat'l Mortgage Ass'n, No. 14–CV–0784, --- F. Supp. 3d ---, 2014 WL 4548638 (N.D. Tex. Sept. 15, 2014); *Kennedy v. Fed. Nat'l Mortgage Ass'n*, No. 13–CV–203, 2014 WL 3905593, at *5–6 (E.D.N.C. Aug. 11, 2014); *Fed. Nat'l Mortgage Ass'n v. Davis*, 963 F. Supp. 2d 532, 537-43 (E.D. Va. 2013); *Carter v. Watkins*, No. 12–CV–2813, 2013 WL 2139504, at *3–4 (D. Md. May 14, 2013); *Fed. Home Loan Bank of Indianapolis v. Banc of Am. Mortgage Sec., Inc.*, No. 10–CV–1463, 2011 WL 2133539, at *1–2 (S.D. Ind. May 25, 2011) (construing the FHLB's substantively identical sue-and-be-sued clause); *Fed. Home Loan Bank of Atlanta v. Countrywide Sec. Corp.*, No. 11–CV–489, 2011 WL 1598944, at *3 (N.D. Ga. Apr. 22, 2011) (construing FHLB charter); *Fed. Home Loan Bank of Chicago v. Banc of Am. Sec. LLC*, 448 B.R. 517, 527 (C.D. Cal. 2011) (construing FHLB charter); *Fed. Home Loan Bank of Chicago v. Banc of Am. Funding Corp.*, 760 F. Supp. 2d 807, 809–10 (N.D. Ill. 2011) (construing FHLB charter); *Rincon Del Sol, LLC v. Lloyd's of London*, 709 F. Supp. 2d 517, 522–25 (S.D. Tex. 2010); *Fed. Home Loan Bank of S.F. v. Deutsche Bank Secs., Inc.*, Nos. 10–3039, 10–3045, 2010 WL 5394742, at *6–8 (N.D. Cal. Dec. 20, 2010) (construing FHLB charter); *Fed. Home Loan Bank of Seattle v. Deutsche Bank Secs., Inc.*, 736 F.Supp.2d 1283, 1286 (W.D. Wash. 2010) (construing FHLB charter); *Knuckles v. RBMG, Inc.*, 481 F. Supp. 2d 559, 562–65 (S.D. W.Va. 2007); *Poindexter v. Nat'l Mortgage Co.*, No. 94 C 5814, 1995 WL 242287, at *10 (N.D. Ill. Apr. 24, 1995) ("12 USC § 1723a(a), is distinguished by the phrase 'in any court of competent jurisdiction, State or Federal,' implying that one must look elsewhere to determine competence").

With its decision below, the Ninth Circuit joined the D.C. Circuit in holding that Fannie Mae's congressional

charter confers original jurisdiction in the federal courts. However, both private individuals and corporate entities share a need for a conclusive judicial determination regarding the frequently reoccurring question of whether the federal courts have original jurisdiction over any case to which Fannie Mae is a party. Because there continues to be a conflict among federal courts regarding whether Fannie Mae's congressional charter confers original jurisdiction in the federal courts, Petitioners request that this Court grant this petition to resolve this issue. *See* U.S. S. Ct. R. 10(a).

II. The Question is of Significant National Importance.

Since the housing market crashed in 2007 and 2008, there has been a significant increase in lawsuits brought by or against Fannie Mae. Due to the increase in litigation, the issue of whether a congressional charter, such as Fannie Mae's, that allows an entity to "sue and be sued" "in any court of competent jurisdiction, State or Federal" confers original jurisdiction in the federal courts has arisen with considerable frequency. After conducting a preliminary review, Petitioners' counsel was able to identify 25 cases decided in the years since the housing market crashed, in which a district court was asked to determine whether the language contained in Fannie Mae's congressional charter conferred original jurisdiction in the federal courts. These cases are spread among the federal district courts of 13 states, located in 8 circuits. Without a decision from this Court, litigants will be forced to continue to engage in costly and time consuming litigation, removing cases to federal court on the basis of Fannie Mae's congressional charter and challenging removal on that basis.

Moreover, without a decision from this Court, whether litigants' are forced to proceed in federal or state court will largely depend on the views of the particular judge assigned to their case. For example, in the Southern District of Texas, United States District Court Judge Janis Jack held, without analysis, that, pursuant to 12 U.S.C. § 1723a, the federal court had original jurisdiction and the suit against Fannie Mae was properly removed. *See C.C. Port, Ltd. v. Davis-Penn Mortgage Co.*, 891 F. Supp. 371, 372 (S.D. Tex. 1994). In the same court, United States District Court Judge David Hittner issued one of the strongest rebukes of original jurisdiction based on Fannie Mae's congressional charter. *See Rincon Del Sol, LLC v. Lloyd's of London*, 709 F. Supp. 2d 517, 522–25 (S.D. Tex. 2010). This uncertainty and variation regarding jurisdiction fosters unnecessary and expensive litigation regarding removal jurisdiction and deprives litigants of due process.

Because of the significant differences between state and federal civil procedure, those plaintiffs who are fortunate enough to have their case remanded to state court have an advantage over plaintiffs who are forced to pursue their case in federal court. For example, in federal court, the jury verdict must be unanimous. *See* Fed. R. Civ. P. 48(b). However, in many state courts, a plaintiff can prevail without a unanimous jury verdict. *See, e.g.*, Alaska Stat. Ann. § 09.20.100 ("In a civil case tried by a jury in any court, whether of record or not, not less than five-sixths of the jury may render a verdict."); Ariz. Rev. Stat. Ann. § 21-102(C) ("A jury for trial in any court of record of a civil case shall consist of eight persons, and the concurrence of all but two shall be necessary to render a verdict."); Ark. R. Civ. P. 48 ("Where as many as nine out

of twelve jurors in a civil case agree upon a verdict, the verdict shall be returned as the verdict of such jury."); Cal. Civ. Proc. Code § 618 ("When the jury, or three-fourths of them, have agreed upon a verdict, they must be conducted into court and the verdict rendered by their foreperson."); Haw. Rev. Stat. § 635-20 ("In all civil cases tried before a jury it shall be sufficient for the return of a verdict if at least five-sixths of the jurors agree on the verdict."); Idaho R. Civ. P. 48 ("Three-fourths (¾) of the jury may render a verdict."); Kan. Stat. Ann. § 60-248(g) ("When the jury consists of 12 members, the agreement of 10 jurors is sufficient to render a verdict."); Ky. Rev. Stat. Ann. § 29A.280(3) ("The agreement of at least three-fourths (3/4) of the jurors is required for a verdict in all civil trials by jury in Circuit Court.").

By way of illustration only, and not by way of limitation, in the Southern District of Texas, a plaintiff prevailing in his motion to remand his case to state court before Judge Hittner, need only persuade five-sixths of the jurors at trial. *See* Tex. R. Civ. P. 292(a) ("[A] verdict may be rendered in any cause by the concurrence, as to each and all answers made, of the same ten or more members of an original jury of twelve or of the same five or more members of an original jury of six"). On the other hand, if that same plaintiff's case was assigned to Judge Jack, he would remain in federal court and would have to secure a unanimous verdict in order to prevail. *See* Fed. R. Civ. P. 48(b). It is plain that such differences can determine the outcome of certain cases. This Court should grant this petition for certiorari to create uniformity in the law because the outcome of one's case should turn on the merits, rather than the judge assigned to the case.

The question presented in this matter will also resolve conflict over the interpretation of various other statutes that contain nearly identical language to that in Fannie Mae's charter. *See, e.g.*, 12 U.S.C. § 1432 ("[Each Federal Home Loan Bank] shall have the power…to sue and be sued, to complain and to defend, in any court of competent jurisdiction, State or Federal."); 12 U.S.C. § 1441(c)(8) ("[The Financing Corporation shall have the power] To sue and be sued in its corporate capacity, and to complain and defend in any action brought by or against the Financing Corporation in any State or Federal court of competent jurisdiction."); 12 U.S.C. § 1702 ("The Secretary [of HUD] shall… be authorized, in his official capacity, to sue and be sued in any court of competent jurisdiction, State or Federal."); 12 U.S.C. § 3012(6) ("[The National Consumer Cooperative] Bank…shall have the power to… sue and be sued in its corporate name and complain and defend, in any court of competent jurisdiction, State or Federal"); 15 U.S.C. § 77dd ("The Corporation [of Foreign Security Holders] shall have power to adopt, alter, and use a corporate seal; to make contracts; to lease such real estate as may be necessary for the transaction of its business; to sue and be sued, to complain and to defend, in any court of competent jurisdiction, State or Federal"); 38 U.S.C. § 3720(a)(1) ("the Secretary [of Veterans' Affairs] may sue and be sued in the Secretary's official capacity in any court of competent jurisdiction, State or Federal.").

III. The Ninth Circuit Incorrectly Held that Fannie Mae's Federal Charter Confers Federal Subject Matter Jurisdiction for Every Case to which Fannie Mae is a Party.

For the reasons set forth in Judge Brown's concurring opinion in *Pirelli* and Judge Stein's dissent in *Lightfoot*, the Ninth Circuit's decision below should be reversed. *See Pirelli*, 534 F.3d at 795-800 (Brown, J., concurring); *Lightfoot*, 769 F.3d at 690-99 (Stein, J., dissenting); *cf. Red Cross*, 505 U.S. at 265-75 (Scalia, J., dissenting).

In sum, the Ninth Circuit's decision is in conflict with well-established principles of statutory interpretation. Ordinarily, the plaintiff is entitled to select the forum in which he wishes to proceed. *See, e.g.*, *Sinochem Int'l Co. v. Malaysia Int'l Shipping Corp.*, 549 U.S. 422, 436 (2007) (referencing "the consideration ordinarily accorded the plaintiff's choice of forum"); *Holmes Group, Inc. v. Vornado Air Circulation Systems, Inc.*, 535 U.S. 826, 831–32 (2002) (discussing extent to which plaintiff is master of the complaint). As this Court has explained:

> Only state-court actions that originally could have been filed in federal court may be removed to federal court by the defendant. Absent diversity of citizenship, federal-question jurisdiction is required. The presence or absence of federal-question jurisdiction is governed by the "well-pleaded complaint rule," which provides that federal jurisdiction exists only when a federal question is presented on the face of the plaintiff's properly pleaded complaint. *See Gully v. First National Bank*,

> 299 U.S. 109, 112–113, 57 S.Ct. 96, 97–98, 81 L.Ed. 70 (1936). The rule makes the plaintiff the master of the claim; he or she may avoid federal jurisdiction by exclusive reliance on state law.

Caterpillar Inc. v. Williams, 482 U.S. 386, 392 (1987) ("Under the "well-pleaded complaint" doctrine, the plaintiff is master of his claim and may avoid federal removal jurisdiction by exclusive reliance on state law."). Further, due to federalism concerns, the removal statute should be construed strictly in favor of remand. *See Shamrock Oil & Gas Corp. v. Sheets*, 313 U.S. 100, 108–09 (1941); *Healy v. Ratta*, 292 U.S. 263, 270 (1934) ("The policy of the statute calls for its strict construction.").

In order to determine whether Congress intended to confer original jurisdiction in the federal courts, "[w]e start, of course, with the statutory text," and "[u]nless otherwise defined, statutory terms are generally interpreted in accordance with their ordinary meaning." *See Sebelius v. Cloer*, 133 S. Ct. 1886, 1893 (2013) (quoting *BP Am. Prod. Co. v. Burton*, 549 U.S. 84, 91 (2006)); *see also Central Bank of Denver, N.A. v. First Interstate Bank of Denver, N.A.*, 511 U.S. 164, 173 (1994); *Perrin v. United States*, 444 U.S. 37, 42 (1979). Here, there is nothing in the statutory text that indicates that Congress intended Fannie Mae's "sue and be sued" provision to confer original jurisdiction with the federal courts. The provision permitting Fannie Mae to "sue and be sued… in any court of competent jurisdiction, State or Federal" does not distinguish among the federal courts, nor does it treat federal courts differently than state courts. *Cf. Red Cross*, 505 U.S. 267-68 (Scalia, J., dissenting). Here, the Ninth Circuit incorrectly held that Fannie Mae's

charter grants the federal district courts with jurisdiction over any such action, where no such language exists. *See Shoshone Mining Co.*, 177 U.S. at 506-7 ("If [Congress] had intended that any new rule of demarcation between the jurisdiction of the Federal and state courts should apply, it would likewise undoubtedly have said so. Leaving the matter as it did, it unquestionably meant that the competency of the court should be determined by rules theretofore prescribed in respect to the jurisdiction of the Federal courts"); *Deveaux*, 9 U.S. (5 Cranch) at 85-86 ("If jurisdiction is given by this clause to the Federal courts, it is equally given to all courts having original jurisdiction, and for all sums, however small they may be."); *Bankers' Trust*, 241 U.S. at 303 ("Had there been a purpose to take suits by and against the corporation out of the usual jurisdictional restrictions relating to the nature of the suit, the amount in controversy, and the venue, it seems reasonable to believe that *Congress would have expressed that purpose in altogether different words*.") (emphasis added).

The Supreme Court has repeatedly emphasized the phrase "competent jurisdiction" almost always refers to subject-matter jurisdiction. *See Wachovia Bank, Nat'l Ass'n v. Schmidt*, 546 U.S. 303, 316 (2006); *United States v. Morton*, 467 U.S. 822, 828 (1984); *Califano v. Sanders*, 430 U.S. 99, 106 n.6 (1977) ("[J]udicial review is to proceed 'in a court specified by statute' or 'in a court of competent jurisdiction.' Both of these clauses seem to look to outside sources of jurisdictional authority."); *Shoshone Mining Co.*, 177 U.S. at 506-7 (interpreting the phrase "in any court of competent jurisdiction" to mean any court with an independent sources of subject matter jurisdiction). When Congress uses statutory language that has been

given a consistent judicial construction, this Court often adheres to that construction in interpreting the statutory language. *See, e.g.*, *Keene Corp. v. United States*, 508 U.S. 200, 212–13 (1993); *Pierce v. Underwood*, 487 U.S. 552, 567 (1988); *Lorillard v. Pons*, 434 U.S. 575, 580–81 (1978). In Fannie Mae's congressional charter, the phrase "in any court of competent jurisdiction" modifies both "State" and "Federal." For the phrase "any court of competent jurisdiction" to have any meaning it should be read as differentiating between state and federal courts that possess "competent" jurisdiction—*i.e.*, an independent basis for jurisdiction—from those that do not. Thus, Fannie Mae's charter does not confer original jurisdiction in the federal courts, but rather indicates Congress's intent to require both state and federal courts to have an independent source of subject matter jurisdiction.

Had Congress intended to confer original jurisdiction with the federal courts, it certainly knew how to do so. *See, e.g.*, 12 U.S.C. § 1819(b)(1) ("[A]ll suits of a civil nature at common law or in equity to which the [FDIC] shall be a party *shall be deemed to arise under the laws of the United States*."); 12 U.S.C. § 1441b ("any civil action, suit, or proceeding to which the Funding Corporation is a party shall be deemed to arise under the laws of the United States, and the United States district courts shall have original jurisdiction over such action, suit, or proceeding"); 12 U.S.C. § 1452(f)(2) ("all civil actions to which the [Federal Home Loan Mortgage] Corporation is a party shall be deemed to arise under the laws of the United States, and the district courts of the United States shall have original jurisdiction of all such actions, without regard to amount or value"); 12 U.S.C. § 2279aa-14(2) ("All civil actions to which the [Federal Agricultural Mortgage] Corporation is a party shall be deemed to arise under the

laws of the United States and, to the extent applicable, shall be deemed to be governed by Federal common law. The district courts of the United States shall have original jurisdiction of all such actions, without regard to amount of value."); 15 U.S.C. § 1819(b)(2)(a) ("[The Small Business Administration may] sue and be sued in any court of record of a State having general jurisdiction, or in any United States district court, and *jurisdiction is conferred upon such district court to determine such controversies without regard to the amount in controversy*") (emphasis added); 19 U.S.C. § 3473(b) ("Any such action to which the [Border Environment Cooperation] Commission is a party shall be deemed to arise under the laws of the United States, and the district courts of the United States (including the courts enumerated in section 460 of Title 28) shall have original jurisdiction of any such action."); 22 U.S.C. § 290m(g) ("any such action to which the [North American Development] Bank shall be a party shall be deemed to arise under the laws of the United States, and the district courts of the United States, including the courts enumerated in section 460 of Title 28, shall have original jurisdiction of any such action."); *see also Cent. Bank of Denver, N.A. v. First Interstate Bank of Denver*, N.A., 511 U.S. 164, 177 (1994) ("If, as respondents seem to say, Congress intended to impose aiding and abetting liability, we presume it would have used the words 'aid' and 'abet' in the statutory text. But it did not."); *Pinter v. Dahl*, 486 U.S. 622, 650 (1988) ("When Congress wished to create such liability, it had little trouble doing so"); *Blue Chip Stamps v. Manor Drug Stores*, 421 U.S. 723, 734 (1975) ("When Congress wished to provide a remedy to those who neither purchase nor sell securities, it had little trouble in doing so expressly"). However, Congress has not conferred original jurisdiction for every case to which Fannie Mae is a party to the federal courts.

This position is further supported by Congress's 1974 amendment to Fannie Mae's congressional charter. As noted by Judge Sidney H. Stein in his dissent below, prior to 1974, both Fannie Mae and Ginnie Mae were required to "maintain [their] principal office in the District of Columbia and shall be deemed, for purposes of venue in civil actions, to be a resident thereof." *See Lightfoot*, 769 F.3d at 697 (Stein, J., dissenting). In 1974, Congress amended this provision to provide that Fannie Mae "shall be deemed, for purposes of *jurisdiction* and venue in civil actions, to be a District of Columbia corporation." *Id.* (emphasis in original); *see* 12 U.S.C. § 1717(a)(2)(B). Congress intended this amendment to give Fannie Mae access to the federal courts pursuant to diversity of jurisdiction. *Id.* at 697-98. Fannie Mae would have no need to use diversity jurisdiction, if the federal courts had original jurisdiction over any case to which Fannie Mae was a party. Thus, Congress's decision to allow Fannie Mae to access federal courts through diversity jurisdiction evidences its understanding that the federal courts did not otherwise have original jurisdiction. This Court should grant a writ of certiorari because the Ninth Circuit incorrectly held that Fannie Mae's "sue and be sued" provision confers original jurisdiction in the federal courts.

IV. The Petition for a Writ of Certiorari Should Be Granted to Review This Court's Decision in *Red Cross*.

In its decision below, the Ninth Circuit relied heavily on the "bright-line" rule stated by this Court in *Red Cross*. *See Lightfoot*, 769 F.3d at 684 ("When federal charters, like those of the Red Cross and of Fannie Mae, 'expressly

authoriz[e] the organization to sue and be sued in federal courts ... the provision extends beyond a mere grant of general corporate capacity to sue, and suffices to confer federal jurisdiction.'") (*quoting Red Cross*, 505 U.S. at 257). For the reasons set forth in Justice Scalia's dissent in *Red Cross*, the majority's decision is not supported by either the plain language of the Red Cross federal charter or the legislative history, and is inconsistent with this Court's previous decisions that analyzed whether congressional charters confer original jurisdiction in the federal courts. *See Red Cross*, 505 U.S. at 265-75 (Scalia, J., dissenting). Accordingly, Appellants respectfully petition this Court to grant a writ of certiorari to review its decision in *Red Cross*.

CONCLUSION

Accordingly, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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EXHIBIT “K”

No. 14-1055

IN THE

Supreme Court of the United States

CRYSTAL LIGHTFOOT, ET AL.,
Petitioners,

v.

FEDERAL NATIONAL MORTGAGE ASSOCIATION,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF IN OPPOSITION

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QUESTION PRESENTED

In *American National Red Cross v. S.G.*, 505 U.S. 247 (1992), this Court construed precedents dating back two centuries as establishing a "basic rule" concerning the jurisdictional effects of a "sue and be sued" provision in a federal corporation's charter. *Id.* at 257. Under that rule, when the provision specifically authorizes the organization to "sue and be sued *in federal courts*," the provision "extends beyond a mere grant of general corporate capacity to sue" and affirmatively "confer[s] federal jurisdiction" over suits by and against the organization. *Id.* (emphasis added). The charter of respondent Fannie Mae provides that Fannie Mae may "sue and … be sued … in any court of competent jurisdiction, State *or Federal*." 12 U.S.C. § 1723a(a) (emphasis added).

The question presented is whether the Ninth Circuit erred in agreeing with the D.C. Circuit—the only other court of appeals to have considered the question—that under *Red Cross*, the express reference to federal courts in the Fannie Mae charter's sue-and-be-sued clause establishes subject matter jurisdiction in cases brought by or against Fannie Mae.

PARTIES TO THE PROCEEDING

Petitioners are Crystal Lightfoot and Beverly Hollis-Arrington, plaintiffs-appellants below.

The principal respondent and defendant-appellee below is Fannie Mae, also known as the Federal National Mortgage Association. Cendant Mortgage Corporation, Attorneys Equity National Corporation, and Robert O. Matthews were also defendants below, but are no longer involved in this litigation.

RULE 29.6 STATEMENT

Fannie Mae is a publicly traded corporation chartered by the U.S. Congress. It is under the conservatorship of the Federal Housing Finance Agency pursuant to 12 U.S.C. § 4617(a)(1)-(2). It has no parent company, subsidiary, or affiliate which has outstanding securities in the hands of the public, and no publicly held corporation owns in excess of ten percent of its outstanding stock.

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INTRODUCTION

In *American National Red Cross v. S.G.*, 505 U.S. 247 (1992), this Court construed a line of precedents dating back to *Bank of United States v. Deveaux*, 9 U.S. (5 Cranch) 61 (1809), concerning the jurisdictional effects of "sue and be sued" clauses in federal corporate charters. Those precedents, the *Red Cross* Court held, together establish the following rule: if a sue-and-be-sued provision specifically references federal courts, then it establishes federal jurisdiction over suits by and against the chartered entity, even absent a separate basis for federal jurisdiction, such as a federal question or diversity of citizenship.

That rule resolves this case. Fannie Mae's corporate charter authorizes it to "sue and to be sued … in any court of competent jurisdiction, State *or Federal*." 12 U.S.C. § 1723a(a) (emphasis added). As the Ninth Circuit held below, that language establishes federal jurisdiction under *Red Cross*.

That holding implicates no circuit conflict. The D.C. Circuit, the only other court of appeals to have considered the question, also applied *Red Cross* and held that Fannie Mae's charter grants federal subject matter jurisdiction. *See Pirelli Armstrong Tire Corp. Retiree Med. Benefits Trust ex rel. Fed. Nat'l Mortg. Ass'n v. Raines*, 534 F.3d 779, 784 (D.C. Cir. 2008). Petitioners cite several appellate decisions interpreting *other* federal charters as not granting federal jurisdiction, but every cited case was decided before *Red Cross*. To the extent there was a conflict among the courts of appeals concerning whether an explicit reference to federal courts in a sue-and-be-sued clause grants federal jurisdiction, *Red Cross*

resolved it, and petitioners offer no valid basis for overruling that decision.

Finally, this case is in any event a poor vehicle through which to reconsider *Red Cross* or to reinterpret Fannie Mae's charter. The underlying action is the third of five essentially identical, frivolous complaints filed in different courts throughout the country. The courts below properly dismissed the complaint as barred by res judicata and collateral estoppel, as have courts in other jurisdictions where petitioners filed similar complaints. If this Court holds that federal courts lack jurisdiction over this case, it likely would not change the ultimate outcome, as the state court is sure to dismiss petitioners' claims as barred by res judicata and collateral estoppel. To the extent the question presented is worthy of review, the Court should await a case where the answer actually could make a difference in the case.

The petition should be denied.

STATEMENT OF THE CASE

A. Statutory And Regulatory Background

Originally established in 1938 in response to the Great Depression, Fannie Mae was created to fulfill an "important public mission[]," 12 U.S.C. § 4501(1), *viz.*, promoting a vibrant secondary mortgage market and making home ownership more accessible for low and middle-income Americans. National Housing Act Amendments of 1938, Pub. L. No. 75-424, 52 Stat. 8, 23 (1938); 12 U.S.C. §§ 1716-1719; *see* S. Rep. No. 102-282, at 9 (1992) (stating that Fannie Mae was "legislatively chartered for public purposes"). Because this mission was a critical component of federal housing policy, Fannie Mae was constitut-

ed as a governmental entity and organized under federal law. 12 U.S.C. § 1716. Its original 1938 charter provided that it could "sue and be sued, complain and defend, in any court of law or equity, State or Federal." National Housing Act, Pub. L. No. 73-479, § 301(c)(3), 48 Stat. 1246, 1253 (1934).

In 1954, with the enactment of the Housing Act of 1954, Fannie Mae was converted to a "mixed-ownership corporation," and the "sue-and-be-sued" provision in its charter was amended to authorize Fannie to "sue and to be sued, and to complain and defend, in any court of competent jurisdiction, State or Federal." Housing Act of 1954, Pub. L. No. 83-560, § 309(a), tit. II, 68 Stat. 590, 620-21 (1954). Notwithstanding these changes to its structure (and others that followed[1]), Fannie Mae retained the same fundamental objective of effectuating federal housing policy by making home ownership more accessible to low and middle-income Americans. *See* S. Rep. No. 102-282, at 25 (noting "the Congressional design in chartering the enterprises as privately owned and managed entities with special, public purposes"); *id.* at 34 (recognizing Fannie Mae's "special relationship with the federal government"); Corporate Governance, 70 Fed. Reg. 17,303, 17,309

[1] In 1968, Fannie Mae was established as a private shareholder owned corporation, Housing and Urban Development Act of 1968, Pub. L. No. 90-448, § 802(z)-(ee), 82 Stat. 476, 540-41 (1968), although it remained heavily regulated by the federal government, *see*, *e.g.*, Federal Housing Enterprises Financial Safety and Soundness Act of 1992, Pub. L. No. 102-550, 106 Stat. 3941 (establishing the Office of Federal Housing Enterprise Oversight as Fannie Mae's primary regulator).

(Apr. 6, 2005) (acknowledging Fannie Mae's "unique mission").

Because Fannie Mae is tasked with effectuating federal policies and achieving federal goals, Congress has ensured that Fannie Mae's structure and operations remain subject to federal oversight. During the period when this case was removed to federal court, Fannie Mae was required, among other things, to submit annual reports to both houses of Congress and various federal agencies and offices. 12 U.S.C. § 1723a(d)(3)(A), 1723a(j), 1723a(m)-(n). Fannie Mae was also required to meet annual housing goals established by the U.S. Secretary for Housing and Urban Development. *See* 12 U.S.C. §§ 4562-64. And Fannie Mae's prior regulator, the Office of Federal Housing Enterprise Oversight ("OFHEO"), enacted numerous federal regulations pursuant to the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, Pub. L. No. 102-550, 106 Stat. 3941, covering a number of topics from executive compensation to Fannie Mae's capitalization, *see* 12 C.F.R. § 1770.1 (executive compensation); *id.* § 1777.1 (capitalization).

Congress expanded the federal government's oversight of Fannie Mae when it enacted the Housing and Economic Recovery Act of 2008 ("HERA"), Pub. L. No. 110-289, 122 Stat. 2654 (2008). HERA established the Federal Housing Finance Agency ("FHFA") as Fannie Mae's regulator and granted FHFA's Director authority to place Fannie Mae into conservatorship or receivership. 122 Stat. at 2662, 2734. Pursuant to that authority, FHFA's Director placed Fannie Mae into conservatorship on September 6, 2008. FHFA subsequently has promulgated a

number of regulations similar to those in effect prior to the conservatorship, including the requirement that Fannie Mae meet annual housing goals established by FHFA, *see* 2012-2014 Enterprise Housing Goals, 77 Fed. Reg. 67,535 (2012), as well as new regulations concerning conservatorship in particular, *see*, *e.g.*, 12 C.F.R. § 1237.12 (precluding capital distributions absent FHFA approval).

B. Factual Background

In August 1999, Cendant Mortgage Corporation ("Cendant") lent petitioner Hollis-Arrington $180,400 secured by a deed of trust on property she owned in West Hills, California. Compl. ¶ 9.[2] Roughly a month later, Cendant sold the loan to Fannie Mae, although Cendant remained the loan's servicer. *Id.* ¶ 10. Fannie Mae subsequently sold the loan back to Cendant because it failed to meet Fannie Mae's credit standards.

The first monthly payment on the loan came due in October 1999. Hollis-Arrington failed to make that payment, or any subsequent payment. *Id.* ¶ 12. She asked Cendant for, and was provided, information about programs to cure the default. Hollis-Arrington sought to enter into a forbearance agreement, and alleges that Cendant led her to believe that a forbearance agreement had been approved. *Id.* ¶ 15. Cendant ultimately rejected the application and initiated foreclosure proceedings.

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[2] All citations to "Compl." or "DE" (without a corresponding case number) refer to complaint and district court docket entries in the underlying action, unless otherwise noted.

In May 2000, to prevent foreclosure, Hollis-Arrington filed a bankruptcy petition. That petition was dismissed the next month for failure to pay the required filing fees. *See* DE 31-33, No. 00-bk-14478-GM (Bankr. C.D. Cal. 2000). In July 2000, she filed a second bankruptcy petition, which was again dismissed for failing to pay the required filing fees. This time, the court's dismissal order barred Hollis-Arrington from filing another bankruptcy petition for 180 days. *See* DE 27, 28, No. 00-bk-16423-GM (Bankr. C.D. Cal.).

On September 11, 2000, Hollis-Arrington deeded her home to her daughter, petitioner Crystal Lightfoot. *See* Compl. Ex. E, No. 03-cv-02416-TPJ (D.D.C. Nov. 21, 2003). Lightfoot filed her own bankruptcy petition. This petition too was dismissed for failure to make the required payments, and the court barred Lightfoot from filing another bankruptcy petition for 180 days. DE 28, 29, No. 00-bk-18360-AG (Bankr. C.D. Cal. 2000).

Cendant scheduled a new foreclosure sale on November 28, 2000, but continued the sale to January 11, 2001, based on Hollis-Arrington's assurance that she was trying to refinance. Although no refinancing ever occurred, the foreclosure was further delayed by court order in the first lawsuit Hollis-Arrington filed in federal district court in October 2000. *See* DE 25, No. 00-cv-11125-CBM-AJW (C.D. Cal. Jan. 10, 2001); *see also infra* at 7-8. On February 5, 2001, four days after the district court lifted the temporary stay it had granted (DE 44, No. 00-cv-11125-CBM-AJW (C.D. Cal. Feb. 1, 2001)), Lightfoot filed a second bankruptcy case, which was dismissed the next month. Lightfoot was again barred from making a

new bankruptcy filing for 180 days. DE 30, 31, No. 01-bk-10910-AG (Bankr. C.D. Cal. 2001).

Lightfoot then transferred 50% of the property back to Hollis-Arrington (Compl. ¶ 102, No. 03-cv-02416-TPJ (D.D.C. Nov. 21, 2003)), who filed her third bankruptcy petition on March 22, 2001. Cendant at that point obtained "in rem" relief from the automatic stay in order to proceed with foreclosure, which was scheduled for June 29, 2001. DE 33, No. 01-12579-GM (Bankr. C.D. Cal.). Despite Hollis-Arrington's attempt to seek a stay in her second suit in federal district court, the foreclosure sale was finally held that day. Compl. ¶¶ 61-72, No. 03-cv-02416-TPJ (D.D.C. Nov. 21, 2003). Harold Tennen and Ed Feldman bought the property at the sale and, through state court action, evicted Hollis-Arrington in September 2001. *Id.* ¶¶ 80-81. They subsequently sold the property to Robert O. Matthews. Compl. ¶ 5.

C. Related Actions

This appeal arises from the third of at least five suits filed by petitioners in connection with the foreclosure of the property. In the first suit, which Hollis-Arrington filed against Cendant in the Central District of California on October 18, 2000, she alleged that Cendant had "fraudulently promised to provide her with a forbearance agreement after she fell delinquent but reneged and foreclosed on the property instead." *Hollis-Arrington v. PHH Mortg. Corp.*, 2005 WL 3077853, at *2 (D.N.J. Nov. 15, 2005). The district court granted Cendant's motion for summary judgment, DE 102, No. 00-cv-11125-CBM-AJW (C.D. Cal. July 15, 2002), and the Ninth

Circuit affirmed, *Hollis-Arrington v. Cendant Mortg. Corp.*, 61 F. App'x 462 (9th Cir. 2003).

In June 2001, while the first case was pending, Hollis-Arrington filed a second action against Cendant, Fannie Mae, and Attorneys Equity National Corporation, again in the Central District of California. This time, her theory was that "that Cendant Mortgage Corporation and the Fannie Mae Corporation violated the Racketeer Influenced and Corrupt Organizations Act ('RICO'), 18 U.S.C. §§ 1962(c) and (d), and federal lending laws by conspiring to issue mortgage loans to unqualified borrowers so that Cendant could acquire the properties by foreclosure." *Hollis-Arrington v. Cendant Mortg. Corp.*, 61 F. App'x 463 (9th Cir. 2003). In May 2002, the district court dismissed the case, DE 131, at 7, No. 01-cv-05658 (C.D. Cal. May 28, 2002), and the Ninth Circuit affirmed, *Hollis-Arrington*, 61 F. App'x at 463.

After the district court dismissed Hollis-Arrington's complaint in the second suit, she and her daughter, Crystal Lightfoot, filed this case in Los Angeles Superior Court on July 18, 2002. They sued the same parties Hollis-Arrington had sued in the second action, and made the same allegations of a conspiracy to make loans to non-creditworthy borrowers. *PHH Mortg. Corp.*, 2005 WL 3077853, at *3. The district court granted motions by Cendant and Fannie Mae to dismiss on res judicata grounds, and subsequently denied a motion to reopen the judgment under Rule 60(b). The Ninth Circuit affirmed. *See infra* at 9-13 (detailing the full procedural history of this litigation).

Hollis-Arrington subsequently filed a fourth action in federal court in the District of Columbia. *Hollis-Arrington v. PHH Mortg. Corp.*, 205 F. App'x 48, 50 (3d Cir. 2006) (per curiam) (discussing No. 03-cv-02416-TPJ (D.D.C. 2003)). The district court granted defendants' motion to dismiss on res judicata grounds, DE 41, No. 03-cv-02416-TPJ (D.D.C. Feb. 17, 2004), and the Court of Appeals for the D.C. Circuit affirmed, Order, *Hollis-Arrington v. Fannie Mae*, No. 04-5068, at 2 (D.C. Cir. Nov. 15, 2004).

Finally, petitioners filed a fifth suit in federal court in New Jersey. *PHH Mortg. Corp.*, 2005 WL 3077853, at *3. The defendants moved to dismiss on a variety of grounds, including res judicata, and the district court granted the motion. *Id.* at *5-12. The Court of Appeals for the Third Circuit affirmed. *PHH Mortg. Corp.*, 205 F. App'x at 55; *see id.* at 52-53 ("res judicata bars suit against . . . Fannie Mae").

D. Proceedings Below

1. As noted above, petitioners filed this case in Los Angeles Superior Court after the similar complaint Hollis-Arrington had previously filed in federal district court was dismissed. On August 22, 2002, Fannie Mae removed the case to federal district court. On August 26, 2002, petitioners filed an application to remand, which was denied on September 5, 2002.

In late August, while the remand briefing was ongoing, defendants Fannie Mae, Cendant, and Matthews filed motions to dismiss on res judicata grounds. On February 20, 2003, the district court granted Cendant's and Fannie Mae's motion to dismiss, concluding that all three elements of res judi-

cata were satisfied. First, "[p]laintiffs have already prosecuted two prior actions concerning the same loan process and eventual foreclosure of their property. ... Thus, the same rights and interests are at issue in the instant case as were adjudicated in the previous actions." DE 59 at 8. Second, "the requirement that the earlier actions result in a final judgment on the merits is met" because "[u]nder federal law, final judgments have preclusive effect under res judicata regardless of the pendency of appeal." DE 59 at 9. Third, the parties were so similar that their interests were adequately represented in the original suit. DE 59 at 10. The court also granted defendants' motion on the alternative ground that petitioners' claims were barred by collateral estoppel.

On June 4, 2003, petitioners filed a motion to set aside the judgment as to all defendants other than Attorneys Equity, and on August 29, 2003, the district court denied the motion. DE 79, at 1. Although judgment had not been entered against Attorneys Equity, petitioners filed a notice of appeal, and on December 15, 2003, the Ninth Circuit summarily affirmed. SER-7-8.[3] This case was removed from the district court's active docket and remained dormant for more than five years.

2. On April 7, 2009, petitioners filed a motion in the district court to restore this case to the court's active calendar for the purpose of entering final judgment pursuant to Federal Rule of Civil Procedure 54(b). On October 21, 2009, the district court

[3] Citations to "SER" refer to the Supplemental Excerpts of Record filed in the Ninth Circuit below.

entered judgment in favor of Cendant, Fannie Mae, and Matthews, "consistent with" its prior order granting the defendants' motions to dismiss. Pet. App. 41a. On May 27, 2010, the district court ordered petitioners to show cause no later than June 10, 2010, why the action should not be dismissed with prejudice as to Attorneys Equity based on res judicata. Petitioners did not respond by the required deadline, and on June 11, 2010, the court entered judgment for Attorneys Equity on res judicata grounds.

That same day, petitioners moved to set aside the judgment pursuant to Rule 60(b). On September 27, 2010, the district court denied petitioners' motion to set aside the judgment. The district court first held that it lacked jurisdiction over the motion because petitioners failed to file it within a year after entry of judgment. The court held that "[a]lthough [it] did not initially enter a judgment on a separate document as required by Federal Rule of Civil Procedure 58(a), Petitioners demonstrated their belief that the February 20, 2003 order was a final judgment." DE 117 at 7. "Because the parties treated the order of dismissal as a judgment, the Court finds that, for purposes of Rule 60(b)(3), judgment was entered as to these defendants on July 21, 2003, which was 150 days from the date of entry of the February 20, 2003 order of dismissal." *Id.*

The court also rejected petitioners' motion on the merits, explaining that "[p]laintiffs have failed to present clear and convincing evidence that Defendants' attorneys perpetrated fraud upon the Court, that the judgment was unfairly procured, or that the evidence was not previously available to petitioners.

Indeed, the evidence was clearly discoverable prior to the filing of the Rule 60(b) Motion because the documents are public records and plaintiffs presented the same facts to the Court more than seven years ago." DE 117 at 8. The court also rejected petitioners' request for "'an independent action for the court to set aside the judgment for "fraud upon the court."'" DE 117 at 9. Construing the request as one for relief under Rule 60(b)(6), the court held that there was "no basis for this extraordinary relief." *Id.* Petitioners appealed.

3. On appeal, the Ninth Circuit issued a memorandum order, holding that "[t]he district court did not abuse its discretion by denying plaintiffs' Rule 60(b) motion to set aside the judgment because plaintiffs failed to establish any ground for relief." *Lightfoot v. Cendant Mortg. Corp.*, 465 F. App'x 668, 669 (9th Cir. 2012). The court of appeals also held that "[t]he district court had removal jurisdiction because state claims filed to circumvent the res judicata impact of a federal judgment may be removed to federal court." *Id.*

On January 20, 2012, petitioners petitioned for panel rehearing and rehearing en banc. On April 13, 2012, the court of appeals sua sponte withdrew its earlier memorandum disposition and denied as moot petitioners' petition for rehearing and rehearing en banc. The Court appointed pro bono counsel for petitioners and directed the parties to file either replacement or supplemental briefs. The Court directed that "[i]n addition to any other issues the parties address in their briefs, they shall address whether the district court had subject matter jurisdiction on the basis of the federal charter of [Fannie

Mae]." DE 32 at 2, No. 10-56068 (9th Cir. Apr. 13, 2012).

4. After new briefing and argument, the court of appeals held that Fannie Mae's sue-and-be-sued clause "confers federal question jurisdiction over claims brought by or against Fannie Mae." Pet. App. 5a. That result, the court held, followed from the "clear rule" established by this Court in *American National Red Cross v. S.G.*, 505 U.S. 247 (1992), "for construing sue-and-be-sued clauses for federally chartered corporations." Pet. App. 5a.

Specifically, the court explained that in *Red Cross*, this Court recognized "a line of cases, stretching back to *Osborn v. Bank of the United States*, 22 U.S. (9 Wheat.) 738 (1824), that made clear that a sue-and-be-sued clause for a federally chartered corporation confers federal question jurisdiction if it specifically mentions federal courts." Pet. App. 6a (citing *Red Cross*, 505 U.S. at 252-56). Under that clear "rule," when "federal charters, like those of the Red Cross and of Fannie Mae, 'expressly authoriz[e] the organization to sue and be sued in federal courts ... the provision extends beyond a mere grant of general corporate capacity to sue, and suffices to confer federal jurisdiction.'" Pet. App. 7a-8a (quoting *Red Cross*, 505 U.S. at 257). The court concluded: "As the Court of Appeals for the D.C. Circuit has already held, that rule resolves this case." Pet. App. 8a (citing *Pirelli Armstrong Tire Corp. Retiree Med. Benefits Trust ex rel. Fed. Nat'l Mortg. Ass'n v. Raines*, 534 F.3d 779, 784 (D.C. Cir. 2008)).

District Judge Stein, sitting by designation, dissented, principally arguing that the majority's posi-

tion fails to give meaning to the term "any court of competent jurisdiction" in the sue-and-be-sued clause. *See* Pet. App. 26a ("Absent the 'of competent jurisdiction' proviso, this clause would clearly confer jurisdiction on the federal courts."); Pet. App. 26a-32a. The dissent contended the "plain language" of that proviso required reading Fannie Mae's charter as merely allowing Fannie Mae to sue and be sued in any court that independently has jurisdiction over the action. Pet. App. 26a.

The majority rejected that position. The majority noted that the dissent's "plain language" argument relied on several court of appeals decisions reading a "court of competent jurisdiction" proviso in other federal charters as suggesting that the federal charter was not an independent grant of jurisdiction. Pet. App. 26a-27a (citing *C.H. Sanders Co. v. BHAP Hous. Dev. Fund Co.*, 903 F.2d 114, 118 (2d Cir. 1990); *Lomas & Nettleton Co. v. Pierce*, 636 F.2d 971, 973 (5th Cir. 1981); *Bor-Son Bldg. Corp. v. Heller*, 572 F.2d 174, 181 (8th Cir. 1978); *Lindy v. Lynn*, 501 F.2d 1367, 1368 (3d Cir. 1974)). "But all of these cases," the court explained, "predate *Red Cross*." Pet. App. 14a.

The majority further explained that before 1954, Fannie Mae's charter allowed it to sue and be sued "in any *court of law or equity*, State or Federal," but replaced the italicized words with "court of competent jurisdiction" in 1954. Pet. App. 8a. The dissent acknowledged that before 1954, the statute vested federal courts with jurisdiction, but argued that Congress stripped the provision's jurisdiction-conferring power in the 1954 amendment. Pet. App. 32a-33a. The majority responded that "[t]here is no

indication that Congress intended to eliminate federal question jurisdiction in 1954 by replacing the phrase 'court of law or equity' with the phrase 'court of competent jurisdiction.'" *Id.* at 9a. "If Congress wanted to eliminate the grant of federal question jurisdiction from Fannie Mae's charter," the court observed, "it is highly unlikely that it would have done so in the way the dissent suggests." Pet. App. 9a, 11a. Instead, the court explained, the distinction between law and equity was all but an "anachronism" by 1954, and thus "the most likely explanation for replacing the phrase 'court of law or equity' with 'court of competent jurisdiction' is that Congress was simply modernizing Fannie Mae's charter" by deleting that anachronism. Pet. App. 10a

The court accordingly held that the district court had properly exercised jurisdiction in this case, and affirmed the district court's judgment on the merits for the reasons stated in its prior opinion. Pet. App. 21a.

5. Petitioners sought rehearing en banc. The Ninth Circuit denied the petition without dissent, with only District Judge Stein recommending the petition be granted. Pet. App. 1a-2a.

REASONS FOR DENYING THE PETITION

The petition should be denied. *Red Cross* squarely holds that where, as here, a federal corporate charter's sue-and-be-sued clause specifically mentions suit in federal court, the clause establishes federal jurisdiction over suits by and against the chartered entity. 505 U.S. at 257. There is no circuit conflict on the meaning and application of *Red Cross*. There is also no reason to overrule *Red Cross*—a

statutory precedent that Congress is free to overrule at any time—and this case would be a poor vehicle for doing so in any event.

A. The Decision Below Is Correct

1. *Centuries-Old Precedents Hold That A Federal Charter's Explicit Reference To Suit In Federal Court Establishes Federal Jurisdiction*

Petitioners principally contend that this Court should grant certiorari because the decision below is "inconsistent" with this Court's precedent. Pet. 6-11. Petitioners are wrong. The Ninth Circuit's decision is not only consistent with, but is compelled by, a two-century-old line of this Court's precedents culminating in *Red Cross*.

Red Cross involved a provision in the American Red Cross's charter authorizing it "to sue and be sued in courts of law and equity, State or Federal, within the jurisdiction of the United States." 505 U.S. at 248 (quotations and citation omitted). The question was whether that provision "confer[red] original jurisdiction on federal courts over all cases to which the Red Cross is a party, with the consequence that the organization is thereby authorized to remove from state to federal court any state-law action it is defending." *Id.* This Court noted that it did "not face a clean slate" in considering the question. *Id.* at 252. Rather, since the Republic's early years, the Court had on "several occasions . . . consider[ed] whether the 'sue and be sued' provision of a particular federal corporate charter conferred original federal jurisdiction over cases to which that corporation was a party." *Id.* And the critical question in those early cases, the Court emphasized, was

whether the "sue and be sued" provision specifically mentioned the federal courts; where it did, the Court held that the provision conferred federal subject matter jurisdiction. *Id.*

The first case in this line was *Bank of United States v. Deveaux*, 9 U.S. (5 Cranch) 61 (1809), which held that a provision authorizing the first Bank of the United States "to sue and be sued, plead and be impleaded, answer and be answered, defend and be defended, in courts of record, or any place whatsoever" did *not* confer independent federal court jurisdiction. This generally stated power to sue and be sued, the Court explained, "is conferred by every incorporating act, and is not understood to enlarge the jurisdiction of any particular court." *Id.* at 85-86. By way of contrast, the Court pointed to a different provision, which subjected the president and directors in their individual capacity to suit and "expressly authorize[d] the bringing of that action *in the federal or state courts*." *Id.* at 86 (emphasis added). That difference reflected Congress's intention that a generic right to sue "does not imply a right to sue in the courts of the union, unless it be expressed." *Id.*

In *Osborn v. Bank of United States*, 22 U.S. (9 Wheat.) 738 (1824), the Court considered a revised sue-and-be-sued clause written into the charter of the second Bank of the United States. That clause now authorized the Bank to "sue and be sued, plead and be impleaded, answer and be answered, defend and be defended, in all State Courts having competent jurisdiction, *and in any Circuit Court of the United States*." *Id.* at 817 (emphasis added). Contrasting that clause with the first Bank's provision, which merely granted "a general capacity in the

Bank to sue, without mentioning the Courts of the Union," the Court held that the new reference to suit specifically "'in every Circuit Court of the United States'" sufficed to "confer[] jurisdiction on the Circuit Courts of the United States." *Id.* at 817-18.

In *Red Cross*, the Court read *Deveaux* and *Osborn* as together establishing "the basic rule" that "a congressional charter's 'sue and be sued' provision may be read to confer federal court jurisdiction if, but only if, it *specifically mentions the federal courts*." *Red Cross*, 505 U.S. at 255 (emphasis added); *see id.* at 257 ("The rule established in these cases makes it clear that the Red Cross Charter's 'sue and be sued' provision should be read to confer jurisdiction."). Under this "basic rule," the Court explained, when a federal charter explicitly authorizes the chartered entity "to sue and be sued in federal courts," the provision "extends beyond a mere grant of general corporate capacity to sue" and "suffices to confer federal jurisdiction." *Id.* at 257.[4]

As the Ninth Circuit correctly held, the *Deveaux-Osborn-Red Cross* rule "resolves this case." Pet. App. 8a. From the first day, Congress has always authorized Fannie Mae to sue and be sued *in federal court specifically*. *Compare* National Housing Act, Pub. L. No. 73-479, § 301(c)(3), 48 Stat. 1246, 1253

[4] The Solicitor General filed an amicus brief in *Red Cross* articulating the position ultimately adopted by the Court. *See* Br. for United States as Amicus Curiae Supporting Pet'rs, *Am. Nat'l Red Cross v. S.G.*, 1992 U.S. S. Ct. Briefs LEXIS 115, at *5-6 (this Court's decisions since at least 1824 have "established a clear rule that congressional charters provide for original jurisdiction in the federal courts whenever they specifically grant a right to sue and be sued in federal courts").

(1934) (predecessor entity can be "sue and be sued, complain and defend, in any court of law or equity, State or Federal") *with* 12 U.S.C. § 1723a(a) (Fannie Mae can sue and be sued "in any court of competent jurisdiction, State or Federal"). There is no ambiguity about the controlling charter language or its jurisdictional effect.

Petitioners' argument to the contrary cannot escape *Red Cross*. According to petitioners, "there is nothing in the statutory text that indicates that Congress intended Fannie Mae's 'sue and be sued' provision to confer original jurisdiction with the federal courts." Pet. 26. Yes, there is: the explicit reference to suit in federal court reflects precisely that congressional intent, as *Red Cross* squarely holds.

Petitioners also cite *Shoshone Mining Co. v. Rutter*, 177 U.S. 505 (1900), which holds that a provision merely authorizing suit "in a court of competent jurisdiction" did not itself confer federal jurisdiction. *Id.* at 506-07. The petition itself acknowledges the glaring distinction between that provision and the Fannie Mae charter provision: "the inclusion of the phrase 'State or Federal.'" Pet. 8. That distinction makes all the difference under *Red Cross*.[5]

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[5] Petitioners also rely on *Keifer & Keifer v. Reconstruction Finance Corp.*, 306 U.S. 381 (1939), but that case is entirely inapposite. *Keifer* held that a federal corporation entitled "to sue and be sued, to complain and to defend, in any court of competent jurisdiction, State or Federal," was not protected by sovereign immunity from suit. *Id.* at 392-93. That holding had nothing to do with the text of the federal charter—the question before the Court was "not a textual problem," but rather turned on background principles of sovereign immunity. *Id.* at 389. More important, it is true but irrelevant that the Court "did not

Petitioners also assert that two of this Court's cases—*Minnesota v. United States*, 305 U.S. 382 (1939), and *Kennecott Copper Corp. v. State Tax Comm'n*, 327 U.S. 573 (1946)—"could be interpreted to mean that, in order for Congress to ensure that a litigant is able to bring a case in either state or federal court, it *must* include the phrase 'in any court of competent jurisdiction, *State or Federal*.'" Pet. 11. Even if those cases were subject to that interpretation, petitioners' view of the significance of the words "State or Federal" was specifically considered and rejected in *Red Cross*. The *dissent* in *Red Cross* would have held, as petitioners now submit, that the "addition of the words 'State or Federal' eliminates the possibility that" Red Cross's charter "might be read to limit the grant of capacity to sue in federal court." 505 U.S. at 275 (Scalia, J., dissenting) (emphasis omitted). The Court, of course, disagreed, instead holding that the charter's specific reference to federal courts served to grant federal courts subject matter jurisdiction over suits by and against the Red Cross. *Id.* at 257. The same rule applies to Fannie Mae's charter.

Petitioners all but admit that *Red Cross* compels the result here. They describe that case as holding that "the inclusion of the word 'Federal' in the Red Cross congressional charter conferred original jurisdiction in the federal courts." Pet. 14. And they correctly observe that the "the Ninth Circuit relied

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hold that the language also conferred jurisdiction," Pet. 7, since that question was not before the Court—the only question was whether Congress had "endow[ed] [the] governmental corporation with the government's immunity." 306 U.S. at 389.

heavily on the 'bright-line' rule state by this Court in *Red Cross*." Pet. 30.

Rather than quarrel seriously with the application of *Red Cross* to the facts here, petitioners suggest that the Court should "review its decision in *Red Cross*." Pet. 31. But they offer no basis for doing so other than the "the reasons set forth" in the dissent in that case more than two decades ago. *Id.* This Court, of course, "does not overturn its precedents lightly." *Michigan v. Bay Mills Indian Cmty.*, 134 S. Ct. 2024, 2036 (2014). To the contrary, "any departure" from stare decisis "demands special justification," *id.* (quoting *Arizona v. Rumsey*, 467 U.S. 203, 212 (1984)), which certainly requires more than "retreads of assertions [the Court has] rejected before," *id.* at 2037. And "*stare decisis* carries enhanced force when a decision, like [*Red Cross*], interprets a statute," *Kimble v. Marvel Entm't, LLC*, No. 13-720, slip op. at 8 (U.S. June 22, 2015), because "Congress remains free to alter what [the Court has] done." *Patterson v. McLean Credit Union*, 491 U.S. 169, 173 (1989); *see Bay Mills*, 134 S. Ct. at 2037 (declining to overrule prior precedent on tribal immunity because, *inter alia*, "it is fundamentally Congress's job, not ours, to determine whether or how to limit tribal immunity").

After *Red Cross* was decided, Congress could have rewritten any federal charter with language like the Red Cross's charter, including Fannie Mae's, to restrict its jurisdictional effect. Indeed, Congress enacted a host of provisions altering Fannie Mae's oversight structure in 2008, *see supra* at 4-5, yet did nothing to restrict the scope of federal jurisdiction created by its charter under *Red Cross*. *See Bay*

Mills, 134 S. Ct. at 2038 ("Since [the prior decision], Congress has continued to exercise its plenary authority over tribal immunity, specifically preserving immunity in some contexts and abrogating it in others, but never adopting the change Michigan wants.").

2. *The Particular History Of Fannie Mae's Charter Confirms That It Grants Subject Matter Jurisdiction*

Even beyond a straightforward application of the *Deveaux-Osborn-Red Cross* rule, the specific history of Fannie Mae's charter further confirms that it grants federal courts subject matter jurisdiction over any suit brought by or against Fannie Mae.

Before 1954, Fannie Mae's charter provided that it could "sue and be sued, complain and defend, in any court of law or equity, State or Federal." National Housing Act, Pub. L. No. 73-479, § 301(c)(3), 48 Stat. 1246, 1253 (1934). Petitioners do not mention this history, but there is no question that this pre-1954 statute conferred federal jurisdiction—this Court held in *D'Oench, Duhme & Co. v. FDIC*, 315 U.S. 447 (1942), that the FDIC's identically worded charter granted federal jurisdiction, *id.* at 455, which is why even the dissent below conceded that Fannie Mae's original charter "inarguably gave Fannie Mae access to the federal courts." Pet. App. 33a.

The only question here accordingly is whether Congress intended to *eliminate* jurisdiction in 1954, when it amended Fannie Mae's charter to replace the phrase "in any court of law or equity" with the phrase "in any court of competent jurisdiction." The

answer is no, as the Ninth Circuit and D.C. Circuits have recognized.

This Court's precedents have always recognized that when a sue-and-be-sued clause does *not* refer to federal courts, an intent to create federal jurisdiction cannot be inferred. *See*, *e.g.*, *Osborn*, 9 Wheat. at 818 ("a general capacity in the Bank to sue, without mentioning the Courts of the Union, may not give a right to sue in those courts"). Given that clear, longstanding rule, if "Congress in 1954 did not want to continue to confer federal jurisdiction in Fannie Mae cases, it logically would have omitted the word 'Federal' from the statute, not attempted a bank shot by adding the words 'of competent jurisdiction.'" *Pirelli*, 534 F.3d at 786. Indeed, Congress did exactly that in the same year it added the "of competent jurisdiction" language to Fannie Mae's charter, deleting the word "Federal" from the "sue-and-be-sued" provision of the Federal Savings and Loan Insurance Corporation ("FSLIC") statute. Pub. L. No. 83-560, § 501(1), 68 Stat. 590, 633 (1954) (amending Pub. L. No. 73-479, § 402(c)(4), 48 Stat. 1246, 1256 (1934)). "The fact that Congress chose to keep that all-important word in the Fannie Mae statute but to delete it from the FSLIC statute is compelling evidence that Fannie Mae's 'sue-and-be-sued' provision was meant to ensure continuing federal jurisdiction in Fannie Mae cases." *Pirelli*, 534 F.3d at 787.

That conclusion is confirmed by the complete silence in the 1954 amendment's legislative history on the matter. That amendment made numerous changes to the charter as part of an effort to partially privatize Fannie Mae. But while the legislative history of the 1954 amendment "went into great de-

tail explaining the provisions of the 1954 amendments designed to privatize Fannie Mae," it "never once mentioned [the] sue-and-be-sued-clause." Pet. App. 16a. Such silence would be more than a little surprising if the 1954 amendment to the sue-and-be-sued clause had the dramatic effect petitioners posit. "Eliminating the charter's grant of federal question jurisdiction would have imposed a severe new restraint on Fannie Mae's ability to litigate in federal court." Pet. App. 9a. And "[g]iven the important practical effect of eliminating federal question jurisdiction under Fannie Mae's sue-and-be-sued clause, we should expect the House or the Senate to have said something if they intended a change of that sort. Instead, there was silence." Pet. App. 10a; *see Chisom v. Roemer*, 501 U.S. 380, 396 n.23 (1991) ("Congress' silence in this regard can be likened to the dog that did not bark.")

The fact that Congress retained the jurisdiction-conferring character of the sue-and-be-sued provision after Fannie Mae's partial privatization is hardly surprising. Even though Congress in 1954 reduced the level of public ownership in Fannie Mae, Fannie Mae remained (and remains) a uniquely federal enterprise—a federally chartered corporation with the important national purpose of assuring that home ownership is accessible for low and middle-income Americans. There is no reason to infer that Congress secretly wanted to deprive Fannie Mae of access to federal courts.

This statutory history answers petitioners' (and the Ninth Circuit dissent's) contention that following *Red Cross* would render the term "court of competent jurisdiction" superfluous. Pet. 28; Pet. App. 31a. As

the majority below explained, replacing "court of law and equity" with "court of competent jurisdiction" "served the purpose of eliminating an anachronistic reference to courts of law and equity," just as "Congress had recently done in other statutes." Pet. App. 10a, 12a.[6] Petitioners insist that the term "competent jurisdiction" is superfluous under the Ninth Circuit's reading because that term itself only refers to subject matter jurisdiction, and thus has no function if the charter itself grants subject matter jurisdiction. Pet. 27. Yet just two years before the 1954 amendment, this Court interpreted the term "court of 'competent jurisdiction'" in a federal entity's corporate charter as assuring that suit could only be brought against the entity where there was *personal* jurisdiction, i.e., "that review must be in that district where the [defendant] can be served." *Blackmar v. Guerre*, 342 U.S. 512, 516 (1952). More generally, this Court has explained that while the "concept of a court of 'competent jurisdiction'" has "usually" been "used to refer to subject-matter jurisdiction," it "has also been used on occasion to refer to a court's jurisdiction over the defendant's person," *United States v. Morton*, 467 U.S. 822, 828 (1984), which is exactly how Congress used that term here.

The 1954 addition of the phrase "competent jurisdiction" accordingly makes perfect sense for reasons having nothing to do with the elimination of federal jurisdiction, whereas retaining the specific

[6] Moreover, the "competent jurisdiction" proviso also assures that the sue-and-be-sued provision is not read to grant courts of specialized jurisdiction—such as bankruptcy courts or the Court of Claims, or specialized state courts—the authority to hear suits by or against Fannie Mae. *See* Pet. App. 13a.

reference to federal courts could only mean that Congress intended the sue-and-be-sued clause to continue to confer federal jurisdiction.

B. There Is No Circuit Conflict Concerning The Question Presented

Because the result below is compelled not only by the rule announced in *Red Cross* but by the specific statutory history of Fannie Mae's corporate charter, it is unsurprising that the only other court of appeals to have considered the question presented has agreed with Ninth Circuit below. *See Pirelli*, 534 F.3d at 784.

Petitioners admit that *Pirelli* is the only other circuit decision addressing the question whether the Fannie Mae charter establishes federal jurisdiction over suits by and against Fannie Mae. Pet. 17-18. Petitioners nonetheless insist that a circuit conflict exists, based solely on earlier decisions considering the language of *other* federally chartered corporations. Pet. 17-18 (citing *W. Sec. Co. v. Derwinski*, 937 F.2d 1267 (7th Cir. 1991); *C.H. Sanders Co. v. BHAP Hous. Dev. Fund Co.*, 903 F.2d 114 (2d Cir. 1990); *Lomas & Nettleton Co. v. Pierce*, 636 F.2d 971 (5th Cir. 1981); *Lindy v. Lynn*, 501 F.2d 1367 (3d Cir. 1974)). But as the Ninth Circuit recognized, "all of these cases predate *Red Cross*." Pet. 14a. Petitioners cite no post-*Red Cross* circuit decision holding that *any* federal corporate charter specifically referencing federal courts does not confer federal subject matter jurisdiction.

It is true that federal *district* court decisions have disagreed over whether Fannie Mae's charter confers federal subject matter jurisdiction. Pet. 18-20. But

the courts of appeals are fully capable of resolving that conflict without this Court's intervention. Should a court of appeals ever ignore *Red Cross* and create a circuit conflict over the jurisdictional effect of Fannie Mae's charter language, this Court can resolve the conflict when it arises. There is no need for review at this time.

C. This Case Is A Poor Vehicle Through Which To Resolve The Question Presented

Finally, this case presents a poor vehicle for reconsidering *Red Cross* and evaluating Fannie Mae's charter language, because petitioners' underlying case is utterly without merit. Petitioners have filed the same frivolous complaint in five different courts—including four times in the federal courts they now seek to avoid—and the courts below had no trouble dismissing this particular suit on res judicata and collateral estoppel grounds. *See supra* at 7-10. Even if this Court were to hold that the district court lacked jurisdiction to enter that judgment, there is no doubt that the state trial court would dismiss the complaint on the same grounds, as several other courts have done. *Id.* If this Court is to resolve the question presented, it should do so in a case where the answer would make a difference in the litigation.

Moreover, the procedural posture of this case casts doubt on whether petitioners could obtain even a remand to state court, regardless how this Court resolves the question presented. The only question that the Ninth Circuit considered on the merits in the current appeal was whether the district court

abused its discretion in denying petitioners' Rule 60(b) motion to reopen the judgment. *Lightfoot*, 465 F. App'x at 669; *see also* Pet. App. 21a (after concluding that the district court possessed jurisdiction, affirming on the merits "for the reasons stated in our previous unpublished disposition"). Thus, even if the Court were to resolve the question presented in petitioners' favor, petitioners may be required on remand to satisfy Rule 60(b) to obtain any relief. Petitioners are not entitled to Rule 60(b) relief for several reasons.

First, Rule 60(b) motions "must be made within a reasonable time." Fed. R. Civ. P. 60(c)(1). Here, petitioners did not move under Rule 60(b) until *more than seven years* after judgment was entered against them as to Fannie Mae. *See* DE 117 at 7.

Second, the only basis for relief under Rule 60(b) in light of a favorable decision from this Court as to the question presented would be that the "judgment is void" for lack of subject matter jurisdiction. Fed. R. Civ. P. 60(b)(4). Petitioners never even sought that relief from the district court. *See* DE 117. And even if they had, Rule 60(b)(4) would not entitle them to relief. "Federal courts considering Rule 60(b)(4) motions that assert a judgment is void because of a jurisdictional defect generally have reserved relief only for the exceptional case in which the court that rendered judgment lacked even an 'arguable basis' for jurisdiction." *United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 271 (2010). Even if the Ninth and D.C. Circuits were wrong about the jurisdictional question presented here, there is obviously an "arguable basis" for jurisdiction under Fannie Mae's corporate charter. Thus, to the

extent petitioners are limited to relief under Rule 60(b), they are not entitled to any such relief.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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