

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

FILED

DEC 24 2024

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

WILLIAM KIVETT; et al.,

Plaintiffs-Appellees,

v.

FLAGSTAR BANK, FSB,

Defendant-Appellant.

No. 21-15667

D.C. No. 3:18-cv-05131-WHA  
Northern District of California,  
San Francisco

ORDER

Before: BYBEE and R. NELSON, Circuit Judges, and BOLTON,\* District Judge.

Flagstar Bank's petition for panel rehearing, filed October 7, 2024, is GRANTED. The memorandum disposition filed on August 22, 2024, is withdrawn and submission is vacated pending further order of the court. The court intends to schedule oral argument on a date to be determined. With the withdrawal of the memorandum disposition filed on August 22, 2024, Flagstar Bank's petition for rehearing en banc is denied as moot.

The court requests simultaneous supplemental briefing by the parties addressing whether California Civil Code § 2954.8(a) is preempted by the National Bank Act under the standard and methodology described in *Cantero v. Bank of America, N.A.*, 602 U.S. 205 (2024). The simultaneous briefs may not exceed

---

\* The Honorable Susan R. Bolton, United States District Judge for the District of Arizona, sitting by designation.

12,000 words and shall be due 30 days from the date of this order.