No. 21-15667

In the

United States Court of Appeals for the Ninth Circuit

WILLIAM KIVETT, BERNARD BRAVO, and LISA BRAVO,
Plaintiffs–Appellees,

v.

FLAGSTAR BANK, FSB,
Defendant–Appellant.

On Appeal from the United States District Court
for the Northern District of California
No. 3:18-CV-05131
Hon. William H. Alsup, Judge

BRIEF OF THE BANK POLICY INSTITUTE, AMERICAN BANKERS ASSOCIATION, THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA, AND MORTGAGE BANKERS ASSOCIATION AS *AMICI CURIAE* IN SUPPORT OF DEFENDANT-APPELLANT'S PETITION FOR REHEARING *EN BANC*

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1, the Bank Policy Institute ("BPI"), American Bankers Association ("ABA"), the Chamber of Commerce of the United States of America ("Chamber"), and the Mortgage Bankers Association ("MBA"; collectively, "*Amici*") state that they are not subsidiaries of any other corporation. *Amici* are nonprofit trade groups and have no shares or securities that are publicly traded.

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STATEMENT OF INTEREST

Amici respectfully submit this brief in support of Defendant-Appellant's petition for rehearing *en banc*.[1]

BPI. BPI is a nonpartisan public policy, research, and advocacy group that represents universal banks, regional banks, and the major foreign banks doing business in the United States. BPI produces academic research and analysis on regulatory and monetary policy topics, analyzes and comments on proposed regulations, and represents the financial services industry with respect to cybersecurity, fraud, and other information security issues.

ABA. Established in 1875, the ABA is the united voice of America's $23.4 trillion banking industry, comprised of small, regional, and large national and State banks that safeguard nearly $18.6 trillion in deposits, and extend more than $12.3 trillion in loans.

Chamber. The Chamber is the world's largest business

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[1] The parties have consented to the filing of this *amici curiae* brief. *See* Fed. R. App. P. 29(a)(2). The undersigned counsel certify that no party's counsel authored this brief in whole or in part, and no party or party's counsel, or any other person or entity, other than the *Amici*, their members, or their counsel, contributed money that was intended to fund preparing or submitting this brief. *See* Fed. R. App. P. 29(a)(4)(E).

federation. It represents approximately 300,000 members and indirectly represents the interests of more than three million businesses and professional organizations of every size, in every industry sector, and from every region of the country. An important function of the Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts.

MBA. The MBA is the national association representing the real estate finance industry, an industry that employs more than 300,000 people in virtually every community in the country. Its membership of more than 2,200 companies includes all elements of real estate finance: independent mortgage banks, mortgage brokers, commercial banks, thrifts, REITs, Wall Street conduits, life insurance companies, credit unions, and others in the mortgage lending field.

Collectively, *Amici* have a substantial interest in maintaining a predictable and uniform preemption framework under the National Bank Act of 1864 ("NBA"). *Amici* regularly file as *amici curiae* in cases, like this one, that concern questions critical to the U.S. banking system and possess institutional expertise on these issues. *Amici* believe that by upholding a State-imposed price control on a national bank's product, the

Majority has undermined the uniformity in the operations of national banks, opened the door to disparate State-level interest rate mandates, and introduced untenable compliance costs that will harm consumers.

SUMMARY OF ARGUMENT

This case presents an issue of exceptional importance to the national banking system: whether the NBA permits States to impose price controls on national banks' products and services. The Majority expressed skepticism that States can do so under the Supreme Court's recent decision in *Cantero* v. *Bank of America, N.A.*, 602 U.S. 205 (2024), but felt bound by this Court's pre-*Cantero* decision in *Lusnak* v. *Bank of America, N.A.*, 883 F.3d 1185 (9th Cir. 2018), holding that States generally can do so. Rehearing *en banc* is therefore warranted. Only this Court, sitting *en banc*, can recognize that *Cantero* overturned *Lusnak*, align this Circuit's jurisprudence with *Cantero*, restore coherence to the law of NBA preemption, and reaffirm the uniformity Congress mandated for the national banking system.

First, *Lusnak* conflicts directly with *Cantero*. The Supreme Court made clear that courts must determine preemption through a comparative, precedent-based analysis, considering the text of the State

law, prior Supreme Court decisions, and common sense. *Cantero*, 602 U.S. at 219–20 & 220 n.3. *Lusnak*, however, did none of that. Instead, *Lusnak* allows States to impose price controls on bank products unless those controls are "punitively high" (a term *Lusnak* did not define). 883 F.3d at 1195 n.7. These tests, and the underlying analyses, are wildly divergent from each other.

Second, when *Cantero* is properly applied, the result should be that States *cannot* regulate the prices of national bank products because price controls significantly interfere with a national bank's powers. Even the Majority acknowledged that the law "raises the cost to national banks to use escrow accounts and may discourage them from issuing and servicing loans." *Kivett* v. *Flagstar Bank, FSB*, 154 F.4th 640, 648 (9th Cir. 2025). The price regulation here intrudes far more into national banking powers than the advertising and contractual limits the Supreme Court found to be preempted in *Franklin National Bank of Franklin Square* v. *New York*, 347 U.S. 373 (1954), and *Fidelity Federal Savings & Loan Ass'n* v. *de la Cuesta*, 458 U.S. 141 (1982). As Justice Kavanaugh, who authored *Cantero*, suggested at oral argument, "a law that interferes with the pricing of a product almost by definition

interfere[s] more with the operations of the bank than something that affects advertising." *Cantero* Tr. at 13.

Third, the Majority's decision threatens to erode the uniform national framework that has governed banking for more than 150 years. It could enable each State to dictate the rates or terms of numerous national bank products—not just the mortgage escrow accounts at issue in this particular case—and so transform a uniform federal system into a fragmented one, forcing banks to navigate 50 different regimes for the same service. State-by-State pricing mandates, both limits and requirements, would impose inconsistent costs and operational burdens, undermining national banks' ability to manage risk, capital, and credit across State lines. It is not only the banks, but the banking public, that will be the losers.

ARGUMENT

I. REHEARING *EN BANC* IS WARRANTED IN LIGHT OF THE EXCEPTIONAL IMPORTANCE OF THE ISSUE.

The issue here concerns whether States may impose price limitations on national banks' core financial services and products. Although that question has immediate consequences for consumers' mortgage escrow accounts, it also has much wider application, striking

at the foundation of the uniform, federally governed system of banking that Congress established under the NBA.

Mortgage escrow accounts illustrate why the stakes are so high. They originated during the Great Depression, when unpaid property taxes caused countless homeowners to lose their homes to foreclosure. *See* U.S. General Accounting Office, *Study of the Feasibility of Escrow Accounts on Residential Mortgages Becoming Interest Bearing* 6 (1973). Mortgage escrow accounts were a solution: borrowers make regular payments into these accounts to cover property taxes and insurance, ensuring that tax and insurance obligations are satisfied even in times of financial stress. *Id.* at 5.

Today, mortgage escrow accounts remain central to the U.S. residential mortgage market. As recently as 2016, 79% of mortgage borrowers had mortgages that included an escrow account for tax or insurance purposes. *See* FHFA & CFPB, *A Profile of 2016 Mortgage Borrowers: Statistics from the National Survey of Mortgage Originations* 1, 27, 30 (2018).

Mortgage escrow accounts benefit both lenders and homeowners. *Cantero*, 602 U.S. at 210–11. For homeowners, they allow

for smaller periodic payments rather than large, lump-sum expenses, making homeownership more predictable and, ultimately, affordable. *Id.* For lenders, they mitigate risks associated with extending credit by ensuring timely payment of tax and insurance obligations, "thus protecting the loan collateral (the home)." *Id.*

State-imposed pricing mandates—such as California Civil Code § 2954.8(a)—disrupt this equilibrium. Requiring national banks to pay a State-imposed minimum interest rate on escrow balances increases the cost of offering such accounts. Due to these increased costs, national banks have no choice but to charge higher interest rates, require larger down payments, or decline loans to would-be borrowers, harming consumers. *Amici*'s experience and empirical research confirm that even well-meaning price controls often harm the very consumers they purport to protect.[2]

These concerns extend well beyond mortgage escrow

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[2] *See, e.g.*, William F. Baxter, *Section 85 of the National Bank Act and Consumer Welfare*, 1995 Utah L. Rev. 1009, 1012, 1019–23 (1995) (arguing, based on empirical studies, that federal preemption of State-level price controls improves consumer welfare in competitive credit markets, particularly for the least well-off consumers).

accounts. National banks operating across the U.S. depend on preemption to eliminate conflicting State regulations and to gain the efficiencies of one consistent set of rules. *See* Office of the Comptroller of the Currency, OCC Letter to Conference of State Bank Supervisors 2 (June 9, 2025), https://www.occ.gov/news-issuances/news-releases/2025/nr-occ-2025-52a.pdf ("OCC Letter"). Preemption is thus critical, as it "shields national banking from unduly burdensome and duplicative state regulation." *Kivett*, 154 F.4th at 642 (quoting *Watters* v. *Wachovia Bank, N.A.*, 550 U.S. 1, 11 (2007)). In so doing, "federal preemption has helped to foster the development of national products and services and multi-state markets, which have benefitted individuals and businesses in every state and powered this Nation's economy." OCC Letter at 2. That is why, as the cases collected in Appendix A demonstrate, the bulk of precedent holds that State laws imposing pricing restrictions or requirements on national banks' products and services are preempted.

If left undisturbed, *Kivett* would invite a patchwork of State laws dictating the pricing of national banks' products—from ATM and overdraft fees to interchange charges—precisely the kind of regulatory

fragmentation the NBA was enacted to prevent. *See Tiffany* v. *Nat'l Bank of Mo.*, 85 U.S. 409, 413 (1873) (noting that Congress enacted the NBA so that national banks avoided "the hazard of unfriendly legislation by the States"). In light of these serious implications, *Amici* urge this Court to grant rehearing *en banc*.

II. REHEARING *EN BANC* IS WARRANTED BECAUSE *LUSNAK* CANNOT BE SQUARED WITH *CANTERO*.

The NBA authorizes national banks to "administer home mortgage loans" and to exercise "all such incidental powers as shall be necessary to carry on the business of banking." *Cantero*, 602 U.S. at 210 (citing 12 U.S.C. §§ 24, 371(a)). Under the NBA, State laws are preempted when they "prevent or significantly interfere" with the exercise of those powers. *Id.* at 215 (quoting *Barnett Bank of Marion Cnty., N.A.* v. *Nelson*, 517 U.S. 25, 33 (1996)). In *Cantero*, the Supreme Court clarified how that standard must be applied: courts are to undertake a "practical assessment of the nature and degree of the interference caused by a state law," guided by the "text and structure of the laws, comparison to other precedents, and common sense." *Id.* at 219–20 & 220 n.3. The Court further directed lower courts to compare the nature and degree of interference of a State law against the

interference found in prior cases in which the Supreme Court deemed a State law preempted or not preempted by the NBA. *Id.* at 219–20.

In this case, the Majority ignored the Supreme Court's instruction and did not perform that analysis. Instead, it held that it remained bound by *Lusnak*—a decision that cannot be reconciled with *Cantero*'s framework. *See Miller* v. *Gammie*, 335 F.3d 889, 900 (9th Cir. 2003) (holding that a higher court's decision is controlling if it "undercut[s] the theory or reasoning underlying the prior circuit precedent in such a way that the cases are clearly irreconcilable"). Had the Majority undertaken the comparative inquiry that *Cantero* requires, it would have led to an inescapable conclusion: § 2954.8(a) is preempted. Rehearing *en banc* is therefore warranted to bring this Court's jurisprudence into alignment with the Supreme Court's directive.

A. *Lusnak* Cannot Be Reconciled With *Cantero*.

The Majority's opinion in *Kivett* exemplifies the conflict between *Lusnak* and *Cantero*. Whereas *Cantero* directed courts to conduct a comparative, precedent-driven inquiry into the "nature and degree of the interference caused by a state law," 602 U.S. at 219–20, the Majority instead defaulted to *Lusnak*'s now-rejected reasoning. By doing

so, it ignored the analytical method the Supreme Court expressly required. That departure from controlling law cannot stand for three reasons:

First, *Cantero* requires a "nuanced comparative analysis," directing courts to consider *Barnett Bank* and the six other Supreme Court cases it cites. 602 U.S. at 220. The Majority admitted as much, acknowledging that "*Cantero* admonishes courts to consider *Barnett Bank* and the six cases that *Barnett Bank* cited." *Kivett*, 154 F.4th at 647. And it conceded that the *Lusnak* court "did not cite or discuss the six preemption cases discussed in *Barnett Bank* and recounted in *Cantero*." *Id.* But despite recognizing what *Cantero* demands, the Majority declined to do so, addressing only two cases before adhering to pre-*Cantero* precedent. *Id.* at 647–49. That departure sets this Circuit apart from other courts to apply the *Cantero* framework, each of which has performed the comparative inquiry the Supreme Court demands. *See, e.g.*, *Ill. Bankers Ass'n* v. *Raoul*, 760 F. Supp. 3d 636, 654–56 (N.D. Ill. 2024); *In re Capital One 360 Sav. Acct. Int. Rate Litig.*, 779 F. Supp.

3d 666, 691–93 (E.D. Va. 2024).[3] And that departure from *Cantero* is not a minor analytical difference. In short, the Majority acknowledged the proper preemption test that the Supreme Court declared, but then refused to apply it.

Second, *Lusnak*'s reliance on Section 1639d of the Truth in Lending Act ("TILA") only deepens the conflict with *Cantero*. *See* 15 U.S.C. § 1639d. The Majority effectively read the Court's adoption of a comparative framework, without an explicit rejection of other approaches, as implicit permission to disregard *Cantero*'s directive altogether, asserting that "nothing in *Cantero* suggests that the 'nuanced comparative analysis' . . . is the sole method for determining preemption." *Kivett*, 154 F.4th at 648. As such, the Majority concluded that *Lusnak* permissibly relied on Dodd-Frank's amendment to TILA as evidence that Congress did not view interest-on-escrow laws as significantly interfering with national banks' operations. *Id.* at 647–48.

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[3] Likewise, the First Circuit in *Conti* v. *Citizens Bank, N.A.*, 157 F.4th 10 (1st Cir. 2025), applied the proper methodology by analyzing the relevant Supreme Court precedents, even though *Amici* believe it erred in characterizing *Fidelity* as "inapposite," in deeming *Franklin*'s discussion of incidental powers irrelevant, and in underestimating the practical effects of State interest-on-escrow laws.

That interpretation directly contradicts *Cantero*. The Supreme Court explicitly held that TILA's § 1639d—which "requires national banks to operate escrow accounts for certain mortgages"—was irrelevant to the mortgages before it and therefore irrelevant to the preemption inquiry. *Cantero*, 602 U.S. at 211 n.1. Likewise, because TILA does not apply to the mortgages at issue here, § 1639d is irrelevant to the preemption analysis.[4] By reviving *Lusnak*'s reliance on § 1639d and then suggesting that courts may devise whatever test they deem appropriate, the Majority has engaged in precisely the fragmentation that *Cantero* sought to eliminate.

Third, *Lusnak* illustrates the danger of allowing courts to devise their own preemption tests. Rather than applying the required comparative analysis, *Lusnak* established a rule that States may impose

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[4] *Lusnak* further erred by treating the ability of some national banks to comply with California's interest-on-escrow law as relevant to the preemption question. *See* 883 F.3d at 1196. The preemption standard does not require a State law to make it impossible or "punitive" for national banks to exercise their powers. As *Cantero* and past Supreme Court precedent confirm, a law may significantly interfere regardless of the feasibility of compliance. *See, e.g.*, *Cantero*, 602 U.S. at 217 (explaining that the State law in *Fidelity* was preempted even though the federal savings and loan association could "readily" comply with the law).

price controls on national bank products unless those price controls were "punitively high," 883 F.3d at 1195 n.7, a standard that *Lusnak* never defined and has never been adopted by any other court.

In *Cantero*, the Court rejected categorical approaches at both extremes. It declined to adopt the Second Circuit's approach, which it viewed as "preempt[ing] virtually all state laws that regulate national banks," as well as the plaintiffs' approach, which "would preempt virtually no non-discriminatory state laws that apply to both state and national banks." 602 U.S. at 220–21. *Lusnak*, however, effectively adopted the latter extreme, boundlessly declaring that "no legal authority establishes that state escrow interest laws prevent or significantly interfere with the exercise of national bank powers, and Congress itself, in enacting Dodd-Frank, has indicated that they do not." 883 F.3d at 1197. As the Dissent explained, that position is not only wrong as a matter of law, but deeply flawed in practice. *Kivett*, 154 F.4th at 649, 654–56. After all, "a 2% interest rate is 'six times higher than the long-run average of .32% paid by FDIC-insured U.S. depository institutions on certificates of deposit.'" *Id.* at 657 n.2 (quoting Br. of *Amici Curiae* Bank Pol'y Inst. et al. at 12, *Bank of Am., N.A.* v. *Lusnak*,

139 S. Ct. 567 (2018) (No. 18-212)). If a six-times multiplier rate is not "punitive," then what is?

Even accepting the Majority's premise that *Lusnak* did not "apply anything close to a categorical test" because preemption might still apply where a State mandates "punitively high" interest rates, *Kivett*, 154 F.4th at 643, 646, its reasoning still fails. *Cantero* directs courts to use "common sense" and to *compare the nature and degree* of interference posed by a State law against prior precedent. *Cantero*, 602 U.S. at 219–20 & 220 n.3. The "punitively high" standard is not moored in Supreme Court precedent and abandons the Supreme Court's comparative inquiry altogether, replacing it with some undefined, subjective inquiry into acceptable rates of return, untethered to the NBA or to any preemption precedent. But preemption cannot hinge on market conditions; it cannot be that a State minimum rate requirement is "punitive" in some rate environments but not others. Nor can preemption be tethered to judicial intuition about what is "punitive." A rule so indeterminate "would not only interfere with national banks' federally granted powers, but also inhibit judicial economy and encourage plaintiffs to sue any time they desired a higher rate on their savings

accounts." *Capital One 360*, 779 F. Supp. 3d at 693. It would further undermine the uniform, predictable rules on which national banking depends. *See generally Kivett*, 154 F.4th at 650 (Nelson, J., dissenting) (explaining how Congress created a uniform national banking system with the NBA).

For more than a century, the Supreme Court has recognized that the national banking system is meant to be "independent, so far as powers conferred are concerned, of state legislation which, if permitted to be applicable, might impose limitations and restrictions as various and as numerous as the states." *Easton* v. *Iowa*, 188 U.S. 220, 229 (1903). *Lusnak*'s contrary approach cannot be squared with that principle or with the Court's preemption precedent.

B. Proper Application Of The *Cantero* Framework Compels The Conclusion That California's Interest-On-Escrow Law Is Preempted.

Properly applied, *Cantero* leads to the "common sense" conclusion that California's interest-on-escrow law "significantly interferes" with the exercise of national banking powers, and is therefore preempted. The Majority itself acknowledged that the California law "raises the cost to national banks to use escrow accounts and may

discourage them from issuing and servicing loans," which "certainly 'interferes' with the banks' unfettered exercise of their statutory powers." *Kivett*, 154 F.4th at 648. Having recognized that interference, the Majority nonetheless declared the question in "equipoise," reasoning that "some (but not all) non-discriminatory state laws that regulate national banks are preempted." *Id.* (citing *Cantero*, 602 U.S. at 221). But equipoise, even if it existed, does not mean that the courts are free to pick and choose. As explained above, *Cantero* establishes an evaluation methodology, requiring courts to weigh the nature and degree of interference against prior precedent—not to call it a "tie-goes-to-the-State," much less anything reasonably close to a tie goes to the State, by declaring the question to be in "equipoise." *Id.*; *see Cantero*, 602 U.S. at 219–20.

Where, as here, the State law directly regulates a national bank's pricing of core banking services, Supreme Court precedent leaves no room for uncertainty. In *Franklin*, "[t]he paradigmatic example of significant interference," *Cantero*, 602 U.S. at 216, the Court struck down a New York law that merely prohibited national banks from using "the word 'savings,' or its variants, by any banks other than its own chartered

savings banks and savings and loan associations," 347 U.S. at 374, holding that it conflicted with national banks' powers to "receive deposits without qualification or limitation," as well as "all such incidental powers as shall be necessary to carry on the business of banking." *Id.* at 376–78. Notably, the State law did not ban national banks from receiving savings deposits or advertising those services; it only limited the use of a single word. *Cantero*, 602 U.S. at 216. Yet, even then, the Court decided that the State law must yield. *Franklin*, 347 U.S. at 379. And in *Fidelity*, the Court considered California law, which placed limitations on the ability of federal savings and loans contracts to exercise due-on-sale clauses. *Fidelity*, 458 U.S. at 148–49. The Court ruled that the law was preempted because it removed the ability for a federal savings and loan association to exercise the clause "solely at its option," and "thus interfered with 'the flexibility given' to the savings and loan by federal law." *Cantero*, 602 U.S. at 217 (citing *Fidelity*, 458 U.S. at 155).

If those restrictions on advertising and loan terms were preempted, then a law dictating the price of a national bank's product must be as well. *See Capital One 360*, 779 F. Supp. 3d at 691 ("[A] claim imposing a mandatory interest rate stands analogous to the preempted

claims in *Franklin*, *Fidelity*, and *Barnett Bank*."); *Ill. Bankers Ass'n*, 760 F. Supp. 3d at 656 (holding a law regulating interchange fees to be "facially more extreme than the sort of state laws that the Supreme Court intended for national banks to be subject to").

The "common sense" logic that *Cantero* instructs courts to apply points unmistakably in the same direction. As Justice Kavanaugh observed during the oral argument in *Cantero*, "a law that interferes with the pricing of the product almost by definition interfere[s] more with the operations of the bank than something that affects advertising." *Cantero* Tr. at 13. He continued to say: "[T]ell someone you have to pay out large sums of money collectively, rather than how you describe your product in your advertising, isn't one more significant interference than the other[?]" *Id.* at 37; *see also id.* at 14 ("[I]t's almost putting a tax on the bank to sell the product, which strikes me as a much more significant interference than simply saying you can't use the word 'savings' in your advertising, which was the issue in *Franklin*.").

That common-sense approach reflects the reality of banking operations. The regulation of pricing directly constrains how national banks manage risk, capital, and liquidity, which are the very functions

the NBA entrusts to federal oversight. State-by-State pricing mandates would raise costs and create duplicative compliance burdens, undermining the uniform national system Congress intended. *See Capital One 360*, 779 F. Supp. 3d at 691 ("[T]here exists 'no indication that Congress intended to subject' national banks to a mandated interest rate for deposit accounts, regardless of whether Plaintiffs, state legislatures or courts determined such a rate."); *see also Beneficial Nat'l Bank* v. *Anderson*, 539 U.S. 1, 10 (2003) (citation omitted) (uniform rules protect national banks against "possible unfriendly State legislation"). If States can dictate the price of one product, nothing prevents them from attempting the same for all other deposit accounts, ATM fees, or other products and services. This would invite a haphazard patchwork of State-by-State regulation and erode national banks' ability to function as *national* institutions.[5] Rehearing *en banc* is therefore essential to restore the uniformity the NBA guarantees and that the Supreme Court reaffirmed in *Cantero*, and to assure fidelity to Supreme Court precedent.

[5] In addition, there is evidence that price controls in general can have detrimental effects on consumer welfare. *See supra* note 2.

CONCLUSION

For the reasons above, this Court should grant rehearing *en banc*.

Dated: New York, New York
November 26, 2025

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APPENDIX A

Bank of Am. v. *City & Cnty. of S.F.*, 309 F.3d 551 (9th Cir. 2002) (non-depositor ATM fees)

Baptista v. *JPMorgan Chase Bank, N.A.*, 640 F.3d 1194 (11th Cir. 2011) (non-account holder check-cashing fees)

Corvallis Hosp., LLC v. *Wilmington Trust*, 2025 WL 2624512 (D. Or. Sept. 11, 2025) (interest, fines, and fees on loans)

Deming v. *Merrill Lynch & Co.*, 528 F. App'x 775 (9th Cir. 2013) (loan administrative and compliance fees)

Ill. Bankers Ass'n v. *Raoul*, 760 F. Supp. 3d 636 (N.D. Ill. 2024) (interchange fees on credit card transactions)

Martinez v. *Wells Fargo Home Mortg., Inc.*, 598 F.3d 549 (9th Cir. 2010) (underwriting and tax service fees)

Metrobank v. *Foster*, 193 F. Supp. 2d 1156 (S.D. Iowa 2002) (non-account holder ATM fees)

Monroe Retail, Inc. v. *RBS Citizens, N.A.*, 589 F.3d 274 (6th Cir. 2009) (account service fees)

Montgomery v. *Bank of Am. Corp.*, 515 F. Supp. 2d 1106 (C.D. Cal. 2007) (nonsufficient funds and overdraft fees)

NNDJ, Inc. v. *Nat'l City Bank*, 540 F. Supp. 2d 851 (E.D. Mich. 2008) (non-account holder official check-cashing fees)

Pereira v. *Regions Bank*, 918 F. Supp. 2d 1275 (M.D. Fla. 2013), *aff'd*, 752 F.3d 1354 (11th Cir. 2014) (check-cashing and settlement fees)

Powell v. *Huntington Nat'l Bank*, 226 F. Supp. 3d 625 (S.D. W. Va. 2016) (payment ordering and late fees)

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FOR THE NINTH CIRCUIT

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