No. 10-16487

Panel Opinion filed February 8, 2012

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

KATHRYN MCOMIE-GRAY,
Plaintiff-Appellant,

v.

BANK OF AMERICA HOME LOANS,
FKA COUNTRYWIDE HOME LOANS, INC.,
Defendant-Appellee

On Appeal from the United States District Court
for the Eastern District of California
The Honorable Morrison C. England

BRIEF OF *AMICI CURIAE* NATIONAL HOUSING LAW PROJECT, HOUSING AND ECONOMIC RIGHTS ADVOCATES, LAW FOUNDATION OF SILICON VALLEY, PUBLIC COUNSEL, AND PUBLIC GOOD LAW CENTER IN SUPPORT OF PLAINTIFF-APPELLANT'S PETITION FOR REHEARING

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CORPORATE DISCLOSURE STATEMENT
(Rule 29(c))

The National Housing Law Project is a non-profit, tax exempt California corporation qualified under section 501(c)(3) of the Internal Revenue Code. It has no parent corporation, nor has it ever issued shares or securities.

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STATEMENT OF INTEREST OF *AMICI CURIAE*

Amici National Housing Law Project, Housing and Economics Rights Advocates, Law Foundation of Silicon Valley, Public Counsel, and Public Good Law Center are organizations that advocate for homeowners, borrowers, and consumers. The clients served by *amici* include large numbers of low-income borrowers who have faced or are facing foreclosure on high-cost loans whose unfavorable terms are often directly attributable to the unscrupulous actions of lenders like the original lender in this case. For these clients, the right of rescission conferred by TILA is often the only remedy for preventing the loss of their homes. It is very much in the interest of the clients served by *amici* that rehearing be granted in this case.[1]

A detailed statement of the identity and interest of each *amicus curiae* may be found in the accompanying Motion for Leave to File.

[1] No party's counsel authored this brief in whole or in part, no party or party's counsel contributed money that was intended to fund preparing or submitting the brief, and no person—other than the *amici curiae*, their members, or their counsel—contributed money that was intended to fund preparing or submitting the brief.

INTRODUCTION AND SUMMARY OF ARGUMENT

This case merits reexamination and the attention of the full Court of Appeals. The fact that the Consumer Financial Protection Bureau has indicated that it will, if given the opportunity, provide its views on the issue before the court, *see* Petition for Rehearing at 10-11, emphasizes both the importance of the issue and the need to reexamine the decision as it currently stands.

The panel opinion, as issued, creates a conflict with earlier decisions of this Court, reaching a conclusion opposite to those cases even while purporting to be bound by them. In particular, this Court's decision in *Miguel v. Country Funding Corp*., 309 F.3d 1161 (9th Cir. 2002), contemplates a rescission regime directly contrary to that envisioned in the panel opinion. As *Miguel* confirms, the Truth in Lending Act permits homeowners to rescind certain loan transactions by "notifying the creditor," 15 U.S.C. § 1635(a), within three days of receiving the disclosures and forms prescribed by the Act, subject to an overall cap of three years from the date of the transaction. 15 U.S.C. § 1635(f); *Miguel*, 309 F.3d at 1165 ("[T]he issue is whether [a] cancellation was effective even though it was not received by the Bank—the creditor—within the three-year statute of repose.").

Yet, despite the fact that the plaintiff in the present case provided notice of rescission before the close of the three-year period, the panel held that because she hadn't filed a *lawsuit* within three years the suit was precluded "regardless of when

the borrower sen[t] notice of rescission . . . .” Slip. op. at 1358. That is, the panel created a requirement that rescission must be exercised by filing a lawsuit—even though neither the Truth in Lending Act nor its implementing regulations anywhere mention such a requirement. To the contrary, the Act and Regulation Z note that the “right to rescind,” 15 U.S.C. § 1635(a), is exercised through sending notice “by mail, telegram or other means of written communication,” 12 C.F.R. § 226.23(a)(2), and that it is specifically this “right of rescission” that is extinguished by the close of the three-year period. 15 U.S.C. § 1635(f); *see also Miguel*, 309 F.3d at 1165 (requiring “*notice of cancellation* within the three-year statutory period”) (emphasis added).

It is perhaps not surprising that the Consumer Financial Protection Bureau, the agency now responsible for interpreting the Truth in Lending Act and overseeing Regulation Z, would want to make its views of this case known.[1]

By engrafting a new requirement onto the straightforward procedure designated by the Truth in Lending Act, the panel opinion would deprive homeowners of a right explicitly granted them by Congress—in direct contravention of the language of the statute creating that right, and in the midst of

[1] The Dodd-Frank Wall Street Reform and Consumer Protection Act shifted TILA’s rule-writing authority and oversight from the Federal Reserve Board to the new Consumer Financial Protection Bureau.

the most severe housing crisis in three quarters of a century.[2]

The regime that the panel decision would create is one that would, in practice, benefit neither creditors nor borrowers—and its impact on already overburdened courts would be particularly detrimental. The rule adopted by the panel would force homeowners to file lawsuits as a precaution rather than attempting to work out rescission arrangements with lenders, thereby clogging courts with avoidable litigation, raising costs, and discouraging out-of-court settlement. And because the panel opinion is the first published federal appellate decision directly addressing a topic of signal importance to homeowners around the nation, the impact of the opinion will be magnified.

For the conflict it creates, the negative consequences it would entail, and the breadth and depth of harm it may visit, the panel opinion calls for review by this Court sitting en banc.

I. THE PANEL OPINION CONFLICTS WITH CIRCUIT PRECEDENT.

This case exemplifies the situation in which "en banc consideration is necessary to secure or maintain uniformity of the court's decisions." Fed. R. App. Proc. 35(a)(1). The panel's conclusion that "§1635(f) . . . requir[es] dismissal of a claim for rescission brought more than three years after the consummation of the

[2] It is estimated that by the time the present crisis runs its course, more than ten million Americans will have lost their homes. *Foreclosure Central*, CTR. FOR RESPONSIBLE LENDING, http://www.responsiblelending.org/mortgage-lending/tools-resources/foreclosures.html (last visited Mar. 6, 2012).

loan . . . , regardless of when the borrower sends notice of rescission," slip. op. at 1358, creates a conflict with previous decisions of this Court. Most saliently, it contravenes the framework of the decision in *Miguel v. Country Funding Corp*., where the Court recognized that borrowers who send timely notice of rescission have an additional year after the lender refuses to cancel in which to file suit. 309 F.3d 1161, 1165 (9th Cir. 2002).

In *Miguel*, the borrower attempted to send notice of rescission within the three-year period provided in section 1635(f), but she did not notify the proper entity. *Id.* at 1164-65. As a result, the Court concluded that the borrower never properly exercised her right of rescission, which expired at the end of three years. *Id.* The court explained:

> Miguel argues that she should have been allotted an additional year in which to file suit after the expiration of the three-year period afforded by the statute. While *Miguel is correct that 15 U.S.C. § 1640(e) provides the borrower one year from the refusal of cancellation to file suit*, that is not the issue before us. Rather, the issue is whether her cancellation was effective even though it was not received by the Bank—the creditor—within the three-year statute of repose.
>
> . . .
>
> The Bank was not required to cancel the loan because Miguel did not notify the Bank of cancellation within the limited three-year period. *Because cancellation was not effected during the three-year period, the additional year statute of limitations provided by § 1640 is irrelevant; it relates to the time for filing suit once cancellation has been wrongly refused.* 15 U.S.C. § 1635(f). In this case, Miguel did not provide the Bank with notice of cancellation within the three-year

> statutory period, so the Bank could not have wrongly refused Miguel's request to cancel. Therefore, § 1640 does not apply.

Id. (emphasis added).

The Court recognized in *Miguel* that a borrower who sends timely notice may thereafter file suit within one year of the lender's failure to respond, even if the suit is brought beyond the three-year period. *See Ibrahim v. MortgageIT, Inc.*, 2011 WL 2560233, at *5 (N.D. Cal. June 28, 2011) ("*Miguel* holds where a borrower fails to timely provide a notice of rescission to the proper entity within three years of the consummation of the loan, the borrower's *right* to seek rescission is extinguished, by operation of law. However, where the borrower timely provides such notice to the correct entity, the right to rescind is deemed to have been properly invoked. At that point, the borrower then has one year from the expiration of the creditor's twenty-day deadline to effect the rescission, as prescribed by § 1635(b), to file suit to enforce his or her right to rescission."); *Santos v. Countrywide Home Loans*, 2009 WL 2500710, at *5 (E.D. Cal. Aug. 14, 2009) ("the court in *Miguel* explicitly accepts [the] construction of rescission under TILA [allowing an additional year for the filing of a lawsuit].").

The panel's decision, however, directly contradicts this conclusion. To resolve the conflict, the Court should rehear the case en banc. *See Antonio v. Wards Cove Packing Co., Inc.*, 810 F.2d 1477, 1478-79 (9th Cir. 1987) ("[T]he appropriate mechanism for resolving an irreconcilable conflict is an en banc

decision.").[3]

II. THE PANEL OPINION CANNOT BE RECONCILED WITH THE LANGUAGE OF THE TRUTH IN LENDING ACT.

The panel opinion is flatly contradicted by the statute that it interprets. Section 1635(f) of the Truth in Lending Act (TILA) requires borrowers to exercise their right of rescission within three days of receiving the required disclosures, with an overall cap of three years for the exercise of the right. 15 U.S.C. § 1635(f). If rescission is not exercised during that period, the right expires, and the borrower can no longer rescind. *See id.* This case turns, therefore, on the steps a borrower must take to exercise rescission within the meaning of section 1635.

A. Sending Written Notice Exercises The Right Of Rescission Under The Truth In Lending Act And Its Implementing Regulations.

The right of rescission is exercised by sending notice to the creditor. Neither the Truth in Lending Act nor Regulation Z requires, or even mentions, the filing of

[3] While the panel opinion recognizes that *Miguel* is no longer good law with respect to the conclusion that section 1635(f) creates a jurisdictional bar, *see* slip op. at 1364, the opinion fails to note that that conclusion has been the sole basis upon which district courts in this Circuit have dismissed borrowers' rescission claims after three years. *See, e.g., Wilson v. JPMorgan Chase Bank, N.A.*, 2010 WL 2574032, at *7 (E.D. Cal. June 25, 2010) ("[B]ecause plaintiff filed her Complaint over three years from the date on which she consummated the loan, the court is *without jurisdiction* to consider her claim for rescission under TILA") (emphasis added); *accord Punzalan v. EMC Mortg. Corp.*, 2011 WL 1838778, at *2 (N.D. Cal. May 13, 2011); *Falcocchia v. Saxon Mortg., Inc.*, 709 F. Supp. 2d 860, 868 (E.D. Cal. 2010). As a result of their reliance on this now-superseded aspect of the *Miguel* decision, *see Gonzalez v. Thaler*, 132 S. Ct. 641, 648-49 (2012), these opinions never reached the substantive issues raised—and resolved—by the language of the Truth in Lending Act. *See infra* Part II.

a lawsuit. Section 1635(a) explains that rescission is effected "by notifying the creditor in accordance with the regulations of the Bureau." 15 U.S.C. § 1635(a). Regulation Z, which implements the Act, states in pertinent part, "To exercise the right to rescind, the consumer shall notify the creditor of rescission by mail, telegram, or other means of written communication." 12 C.F.R. § 226.23(a)(2). Thus the statutory scheme unambiguously establishes that sending written notice exercises the right of rescission. *See Williams v. Homestake Mortg. Co.*, 968 F.2d 1137, 1139, 1141 (11th Cir. 1992).

The panel opinion, however, imports into this straightforward statutory procedure an entirely separate requirement, unmentioned by either the Truth in Lending Act or Regulation Z: that the right of rescission must be exercised by filing a lawsuit. In reaching this conclusion, the panel claimed to be bound not only by *Miguel* but also by the Supreme Court's decision in *Beach v. Ocwen Federal Bank*, 523 U.S. 410 (1998), where the Court recognized section 1635(f)'s strict time limitation. *Id.* at 419 ("[TILA] permits no federal right to rescind, defensively or otherwise, after the 3-year period of § 1635(f) has run."). But *Beach* did not examine the action borrowers must take to exercise the right of rescission. *Stewart v. BAC Home Loans Servs., LP*, 2011 WL 862938, at *6 (N.D. Ill. Mar. 10, 2011) ("*Beach* addressed *when* the right to rescind expires and whether it can be tolled. It leaves unresolved the question of *how* a consumer must exercise that right to

rescind—suit, or notice via letter."). *Beach* limited the time for *exercising* the right, not the time for seeking *enforcement* of the right. *Barnes v. Chase Home Fin., LLC*, 2011 WL 4950111, at *9 (D. Or. Oct. 18, 2011).

The panel opinion would require that a borrower file a lawsuit to fully exercise rescission and satisfy the requirements of section 1635(f). *See* slip op. at 1360-61. But this requirement is unmoored to any language in 15 U.S.C. § 1635, the relevant section of the Act. Instead, Congress provided borrowers with a self-executing right. *In re Hubbel*, 427 B.R. 789, 798 (N.D. Cal. 2010). As this Court recently confirmed, if a "creditor acquiesces in the consumer's notice of rescission or fails to respond within the 20-day response period, rescission is accomplished automatically." *Causey v. U.S. Bank Nat'l Ass'n*, 2011 WL 6881787, at *1 (9th Cir. Dec. 29, 2011) (unpublished); *accord Yamamoto v. Bank of N.Y.*, 329 F.3d 1167, 1172 (9th Cir. 2003).

The *Causey* opinion addressed a situation in which rescission was exercised within three days of the loan closing, but its rule extends to the exercise of rescission rights whenever that may occur within the three year period. Section 1635 does not create two distinct time periods with distinct rules—three days on the one hand, and three years on the other. *See Stewart*, 2011 WL 862938, at *5 ("[I]t seems incongruous for the [Federal Reserve Board] to allow rescission via letter during the "cool off" period—in accordance with Regulation Z—but require

a consumer to bring a suit to exercise that same right to rescind under § 1635(f).”). Instead, there is a continuum, and the two limits work in tandem: the three-year cap serves as an overall limitation on the general rule that rescission may be exercised within three days of disclosure.

The language of the Truth in Lending Act is clear: Congress has provided that borrowers may send notice within three years to exercise their right to rescind within the meaning of section 1635(f). If this regime seems solicitous of borrowers, that is only in keeping with the rule that “TILA [be] liberally construed in favor of the consumer and strictly enforced against the creditor.” *Rubio v. Capital One Bank*, 613 F.3d 1195, 1202 (9th Cir. 2010).[4]

B. Section 1640 Permits Borrowers to Seek Judicial Enforcement Of Rescission Claims Within A Year Of A Creditor’s Failure To Comply, Even If Three Years Have Passed Since Closing.

The question of filing a lawsuit arises only after a borrower has already exercised her right to rescind and is wholly separate from section 1635 and its three-year period of repose. Under section 1640 of the Truth in Lending Act, enforcement of rescission through a lawsuit is permitted for one year after a creditor fails to comply with a notice of rescission. That is, if the lender fails to release the security instrument within twenty days after receiving the rescission

[4] TILA places strict requirements on lenders and provides robust remedies for consumers. *See*, *e.g.*, 15 U.S.C. § 1635(d) (“If the creditor does not take possession of the property within 20 days after tender by the obligor, ownership of the property vests in the obligor without obligation on his part to pay for it.”).

notice, then the lender has violated TILA anew and the borrower has one year after the violation to enforce the rescission in court. 15 U.S.C. § 1640(a), (e).

The panel erroneously concluded, without analysis, that section 1640 was irrelevant to the present action. Slip op. at 1364. To the contrary, as many courts have held, the one-year limitations period of section 1640 applies to actions seeking rescission. *See, e.g., Miguel*, 309 F.3d at 1164-65; *Barnes v. Chase Home Fin., LLC*, 2011 WL 4950111, at *9 (D. Or. Oct. 18, 2011); *Stewart*, 2011 WL 862938, at *6; Br. of Amicus Curiae Nat'l Consumer Law Center 9-10 (collecting cases). Section 1640, therefore, is not only relevant to the case at hand, but also establishes the rule that should have governed disposition of plaintiff's claim: that borrowers may bring suit to enforce rescission within one year of the lender's refusal to cancel.[5]

III. THE PANEL'S RULE, IN PRACTICE, WOULD BURDEN COURTS AND LITIGANTS IN THE MIDST OF AN UNPRECEDENTED HOUSING CRISIS.

Homeowners face a foreclosure crisis that was caused, in no small measure, by conduct on the part of lenders that was at least sloppy, and all too often

[5] In the present case, plaintiff did not file suit within the one-year period. That period can, however, be equitably tolled. *King v. California*, 784 F.2d 910, 915 (9th Cir. 1986). On remand, Ms. McOmie-Gray will have the opportunity to establish that she was "induced or tricked by [her] adversary's misconduct into allowing the filing deadline to pass." *Young v. United States*, 535 U.S. 43, 50 (2002); *accord Ellis v. Gen. Motors Acceptance Corp.*, 160 F.3d 703, 706, 708 (11th Cir. 1998).

deceitful.[6] The business practices of the original lender in this case were among the most notorious in the nation. *See, e.g.*, Center for Responsible Lending, *Unfair and Unsafe: How Countrywide's Irresponsible Practices Have Harmed Borrowers and Shareholders* (2008), *available at* http://www.responsiblelending.org/mortgage-lending/research-analysis/unfair-and-unsafe-countrywide-white-paper.pdf (documenting Countrywide's predatory lending practices, such as targeting elderly and non-English speaking borrowers with abusive loans, charging inflated and unauthorized fees, and using bait-and-switch tactics to put people in loans they couldn't afford); Charlie Savage, *Countrywide Will Settle a Bias Suit*, N.Y. Times, Dec. 22, 2011, at B1 (describing Countrywide's racially discriminatory lending practices that overcharged hundreds of thousands of minority borrowers and deliberately steered them into risky subprime loans); *60 Minutes: Prosecuting Wall Street* (CBS television broadcast Dec. 5, 2011), *available at* http://www.huffingtonpost.com/2011/12/05/countrywide-whistleblower-mortgage-fraud-systemic_n_1129637.html (former Countrywide executive describing widespread abuse and fraud within the company).

Yet the panel opinion would *reduce* the remedies available to homeowners

[6] Gretchen Morgenson, *Countrywide to Distribute Settlement to Its Clients*, N.Y. Times, July 21, 2011, at B1 (according to the FTC chairman, "Countrywide's 'was a business model based on deceit and corruption, and the harm they caused to American consumers is absolutely massive and extraordinary.'").

facing foreclosure—remedies that Congress explicitly provided in the Truth in Lending Act. The opinion would also encourage conduct that would burden the courts and worsen the already frayed relations between borrowers and lenders.

A. The Holding Of The Panel Opinion Would Increase Litigation Through Early, Preemptive Filing.

The panel's requirement that borrowers seeking rescission file a lawsuit within three years would place a new burden on the courts. To avoid losing the opportunity to enforce their statutory right to rescind, borrowers will turn to the courts first, rather than trying to work through the rescission process independently with their lenders. Such defensive filing contravenes congressional intent, as TILA has always envisioned that rescission would be accomplished without court intervention. *See McKenna v. First Horizon Home Loan Corp.*, 475 F.3d 418, 422 (1st Cir. 2007) ("The rescission process is intended to be private, with the creditor and debtor working out the logistics of a given transaction."). Yet as a result of the panel opinion, borrowers will flood the district court dockets with lawsuits that otherwise might have been resolved out of court.

B. The Panel Holding Gives Creditors An Incentive To Delay And Rewards Lenders Who Violate The Truth In Lending Act.

For borrowers who do try to negotiate directly with their lenders, the panel decision would make it much more difficult for homeowners to obtain rescission. The panel holding would give creditors an incentive, once they received a notice of

rescission, to pretend to engage in good-faith negotiations until the three-year period had passed. *See Barnes v. Chase Home Fin., LLC*, 2011 WL 4950111, at *10 (D. Or. Oct 18, 2011). As apparently occurred in this case, lenders would be encouraged to string borrowers along for many months, knowing that if they wait long enough, borrowers will be barred from enforcing their claim in court. *See* Appellant's Opening Br. at 5. The panel decision directly contravenes TILA's statutory purpose of aiding unsophisticated consumers by allowing lenders to avoid liability through the use of such practices. *See Thomka v. A.Z. Chevrolet, Inc.*, 619 F.2d 246, 248 (3d Cir. 1980).

If left undisturbed, the panel opinion will have especially harmful effects on borrowers facing foreclosure. Under the reasoning of the opinion, a lender, when presented with a valid and timely notice of rescission, may unilaterally extinguish the borrower's right to rescind simply by moving forward with foreclosure. *See* 15 U.S.C. § 1635(f) ("An obligor's right of rescission shall expire three years after the date of consummation of the transaction or upon the sale of the property, whichever occurs first . . . ."). This result cannot be squared with the explicit congressional intent for TILA to protect consumers from foreclosure. *See, e.g.*, 15 U.S.C. § 1635(i)(2) (lowering tolerance for underdisclosures under TILA if the creditor has initiated foreclosure).

C. The Panel Opinion Would Not Allow For Enforcement Of Uncontested Rescission.

As this Court recently confirmed, rescission is accomplished automatically if a lender fails to respond to or contest timely notice. *See Causey v. U.S. Bank Nat'l Ass'n*, 2011 WL 6881787, at *1 (9th Cir. Dec. 29, 2011) (unpublished); *Yamamoto v. Bank of N.Y.*, 329 F.3d 1167, 1172 (9th Cir. 2003). But the panel opinion would create a paradox, where certain borrowers cannot enforce rescission even if it is uncontested. That is, if a borrower sends the required notice toward the end of the three-year period, and the creditor does not contest the rescission but fails to terminate the security interest, then according to the panel opinion the rescission can never be enforced if the creditor delays past the end of the three-year period. This is, surely, not what Congress intended. Such a rule would reward lenders for ignoring their borrowers' notices and the Act's statutory requirements.

Additionally, if the panel holding were correct, borrowers could not seek rescission during the full three-year period set out in section 1635(f). Instead, borrowers would be required to send notice within two years three hundred forty-four days, because only by filing early could they provide the lender twenty days to respond to the request as required under section 1635(b) and still have one day in which to file suit if the lender fails to cancel the loan. *See Barnes*, 2011 WL 4950111, at *10. Such a result, of course, directly contradicts the language of the statute.

IV. THE ISSUE IN THIS CASE IS SO IMPORTANT AND SO TIMELY THAT IT MERITS THE ATTENTION OF THE EN BANC COURT.

There is little question that this case "involves a question of exceptional importance" meriting en banc review. Fed. R. App. Proc. 35(a)(2). By seeking to provide its opinion in pending appeals across the country, *see* Petition for Rehearing at 10-11, the Consumer Financial Protection Bureau has signaled the significance of this issue. The Bureau's opinion is entitled to deference, *see Ford Motor Credit Co. v. Milhollin*, 444 U.S. 555, 556 (1980), and only through rehearing this case can the Court ensure that it has had the benefit of the views of TILA's implementing agency.[7]

The panel opinion, if it stands, will have an outsized effect. It will be the first published appellate opinion directly addressing the issue of how rescission must be exercised within the three-year period and, with so many borrowers currently struggling to stay in their homes, its impact will be widely felt across the nation.

The panel opinion is inadequate to stand as this Circuit's interpretation of this critical issue. Judge Pallmeyer's opinion fails to analyze the meaning of "exercising" rescission in section 1635, it fails to examine or explain the anomalies it would create, and it fails to properly apply the precedent of this Circuit.

[7] The order granting an extension for the Bureau to file an amicus brief by March 26 in *Rosenfield v. HSBC Bank, U.S.A.*, appeal docketed, No. 10-1442 (10th Cir. Sept. 27, 2010), is attached as Appendix A.

Because rescission is often the only way for borrowers to prevent foreclosure on high-cost loans, proper analysis of this issue is crucial in the midst of the current crisis. Despite the critical importance of the rescission right, numerous district courts across the country, like the panel opinion, have dismissed borrowers' claims with little or no analysis of the language of the Truth in Lending Act. By rehearing this case en banc, this Court has the opportunity to ensure that the decision in this case reflects both a complete analysis of the law and the views of the entire Court.

CONCLUSION

For the foregoing reasons, and above all to ensure the consistency of Circuit precedent and the integrity of the Truth in Lending Act, *amici* urge the Court to grant the petition for rehearing.

DATED: March 12, 2012

Respectfully Submitted,

s/ Seth E. Mermin

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CERTIFICATE OF COMPLIANCE WITH WORD COUNT
FED. R. APP. P. 29(D) AND 9TH CIR. R. 32-1

Pursuant to Fed. R. App. P. 29(d) and 9th Cir. R. 32-1, the attached amicus brief is proportionately spaced, has a type space of 14 points, and contains 4187 words.

The typeface is Times New Roman 14 point, prepared using Microsoft Word.

March 12, 2012 s/ Seth E. Mermin

Seth E. Mermin

CERTIFICATE OF SERVICE

I hereby certify that on March 12, 2012, I electronically filed the foregoing with the Clerk of the Court for the U.S. Court of Appeals for the Ninth Circuit by using the CM/ECF system.

I certify that all participants in this care are registered CM/ECF users, and that they will be served through the appellate CM/ECF system.

March 12, 2012 s/ Seth E. Mermin

Seth E. Mermin

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APPENDIX A
TO BRIEF OF AMICI CURIAE
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United States Court of Appeals
Tenth Circuit

March 6, 2012

Elisabeth A. Shumaker
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

JEAN C. ROSENFIELD,

Plaintiff - Appellant,

v.

HSBC BANK, USA; STEPHANIE Y. O'MALLEY, as Public Trustee for the City and County of Denver,

Defendants - Appellees,

CONSUMER FINANCIAL PROTECTION BUREAU,

Amicus Curiae,

No. 10-1442

ORDER

This matter is before the court on Consumer Financial Protection Bureau's motion for an extension of time to file an amicus curiae brief. The motion is provisionally granted. Consumer Financial Protection Bureau shall serve and file their amicus curiae brief on or before March 26, 2012.

Entered for the Court,

Elisabeth A. Shumaker

ELISABETH A. SHUMAKER, Clerk