No. 18-8257

In The

Supreme Court of the United States

IRIS McCLAIN,

Petitioner,

v.

WELLS FARGO BANK, N.A., *et al.*,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI FROM THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether the United States Court of Appeals for the Fourth Circuit correctly affirmed the Order of the United States District Court finding that the Petitioner's claims against Wells Fargo were time-barred and failed to otherwise state a claim for relief?

LIST OF THE PARTIES AND RULE 29.6 CORPORATE DISCLOSURE

The Petitioner is Iris McClain. The Respondent is Wells Fargo Bank, N.A., for itself and as successor to Wells Fargo Home Mortgage ("Wells Fargo").

Wells Fargo is a subsidiary of Wells Fargo & Company. Wells Fargo & Company is a bank holding company trading under the symbol "WFC" on the New York Stock Exchange.

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STATEMENT OF THE CASE

This Petition stems from a lawsuit filed by Iris McClain ("Petitioner" or "Ms. McClain") on February 13, 2017, against thirteen defendants, including Wells Fargo, arising from her defaulted mortgage loan, her attempts to modify that loan, and the collection activities relating to her mortgage loan.

Ms. McClain obtained a mortgage loan in the principal amount of $155,800 (the "Loan") which she used to purchase 209 Herrington Drive, Upper Marlboro, Maryland 20774 (the "Property). In exchange for the Loan, Ms. McClain executed both (a) an Adjustable Rate Note dated April 30, 1997 ("Note"), by which she agreed to repay the Loan, with interest adjustable up to eleven percent (11%) and other charges, and (b) a Deed of Trust on the Property securing the repayment of the Loan. The Note was assigned to a securitized trust known as GSMPS Mortgage Loan Trust 2003-2, Mortgage Pass-Through Certificates, Series 2003-2 (the "Trust"). JPMorgan Chase Bank, N.A., f/k/a JPMorgan Chase Bank, was the original Trustee of the Trust, but was succeeded as Trustee by The Bank of New York Mellon, f/k/a The Bank of New York (the "Trustee"). Wells Fargo is the servicer for the Trust.

In 2006, Ms. McClain admits that she fell behind in her Loan payments and sought a loan modification from Wells Fargo Bank. On July 24, 2007, Ms. McClain was offered a Loan Modification Agreement (the "LMA"), which expressly: (a) reduced Ms. McClain's monthly payments of Principal and Interest (*exclusive of additional required escrow*) under her Note to $1,108.98; (b) modified the rate of interest under Ms. McClain's Note from an adjustable rate of interest capable of increasing to eleven

percent (11%) to a fixed rate of interest of seven percent (7%) per annum; and (c) capitalized Ms. McClain's then arrearage into an adjusted Principal Balance. Ms. McClain admits that she accepted the terms of the LMA which she signed and returned.

While the two-page LMA plainly stated on its face that "The borrower promises to make monthly payments of principal and interest of U.S. $ 1,108.98, *at a yearly rate of 7.000%*, not including any escrow deposit," Ms. McClain has embroiled Wells Fargo in more than a decade of litigation regarding whether the LMA converted her adjustable rate mortgage to a fixed interest rate mortgage. By its plain terms it did. Nevertheless, Ms. McClain asserts that she did not realize that the LMA converted her loan to a fixed interest rate until she attended a home preservation workshop in March 2008, when she admits that she was advised that she was not eligible for any further modifications because her Note had already been modified to a fixed rate Note with fixed monthly payments.

Over the course of the next ten years, Ms. McClain filed four (4) bankruptcy petitions, including one in 2009 wherein she contested Wells Fargo's proof of claim. In her objection, she asserted the same allegations regarding the accounting of her Loan and her fixed interest rate under the LMA, which are the gravamen of her Amended Complaint in the underlying appealed action filed nearly eight years later.[1]

[1] *In re Iris McClain,* U.S. Bankruptcy Court for the District of Maryland, Case No. 08-17049 (Chapter 13), filed on 5/23/08, dismissed for failure to file a confirmable plan on 10/17/2008. This bankruptcy was re-opened by another creditor on 09/13/2012 and closed again on 09/26/2012; *In re Iris McClain,* U.S. Bankruptcy Court for the District of Maryland, Case No. 09-22554 (Chapter 13 converted to Chapter 7), filed on 7/9/09,

See Apx. 66-1 through 66-2. Ms. McClain was represented by counsel in the 2009 Bankruptcy and the parties therein jointly submitted a Consent Order Resolving Objection to Proof of Claim. That Consent Order, which was signed and entered by Judge Mannes of the U.S. Bankruptcy Court for the District of Maryland, stated that all of Ms. McClain's claim objections, *including expressly her Amended Objection*, were "WITHDRAWN *WITH PREJUDICE*." Apx. 67. The Consent Order further stated that the Trust's Amended Proof of Claim, reduced by $3,933.62, was deemed "valid" and allowed. *Id.* This finding has not been revisited or revised by any court since that time.

Ms. McClain initiated the underlying civil action in the U.S. District Court for the District of Maryland on February 13, 2017. Her claims below focus on actions allegedly taken by Wells Fargo as the servicer of her Loan and concern its accounting under the LMA offered by Wells Fargo, which the Petitioner admits that she signed and accepted in 2007. Otherwise, the Amended Complaint focuses on efforts to collect the Loan between 2007 and 2009 and filings made in the Petitioner's bankruptcies

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discharge granted on 3/28/12, case closed on 9/25/12; *In re Iris McClain,* U.S. Bankruptcy Court for the District of Maryland, Case No. 15-13657 (Chapter 13), filed on 3/16/15, dismissed for failure to file a confirmable plan on 9/8/16; *In re Iris McClain,* U.S. Bankruptcy Court for the District of Maryland, Case No. 16-22179 (Chapter 13), filed 9/12/16, dismissed on 10/31/17 (the "Fourth Bankruptcy"). Ms. McClain has appealed that dismissal in the Fourth Bankruptcy. That appeal was dismissed for lack of jurisdiction. On May 7, 2018, Ms. McClain moved to vacate the Order dismissing the appeal. That motion was denied and Ms. McClain appealed the U.S. District Court's dismissal for lack of jurisdiction to the Fourth Circuit. On April 8, 2019, the Fourth Circuit affirmed the U.S. District Court's decision.

and the foreclosure relating to her Property.[2] Despite her untimely and vague allegations, the Amended Complaint purported to assert the following ten (10) causes of action against Wells Fargo: fraud (Count I), conspiracy to commit fraud (Count II), violation of the Truth in Lending Act ("TILA") (Count III), unjust enrichment (Count IV), negligent infliction of "emotional stress and pain upon her" (Count V), a violation of the Protection for Home Owners in Foreclosure Act ("PHIFA") (Count VI), violation of the Racketeer Influenced and Corrupt Organizations Act ("RICO") (Count VII), violation of the Fair Debt Collection Practices Act ("FCDPA") (Count VIII), bankruptcy fraud (Count IX), and foreclosure fraud (Count X).

On the basis of her claims, Ms. McClain sought monetary damages below in excess of $1.3 million dollars "for every year, [sic] that Defendant has stubbornly refused to bring an end to this fraudulent scheme," cancellation of all indebtedness on her Loan with the exception of the principal balance owed, a declaration that the LMA is void, a "credit of arrearages based on declining interest rate," an "injunction ordering [an unspecified] Defendant to cease and desist all collection activities," an "award disgorgement of Defendants [sic] revenue received from November 1, 2007 to date judgment is entered, … plus interest according to the Note;" and an order directing the removal of negative credit reporting relating to the Loan.

Wells Fargo moved to dismiss the claims asserted in Ms. McClain's Amended Complaint on the basis that they were barred by *res judicata* and the applicable

[2] On November 14, 2013, a foreclosure action was filed against Ms. McClain's Property by, *inter alia*, Kristine D. Brown, William M. Savage, Gregory N. Britto, and Lila Z. Stitely, as the duly-appointed Substitute Trustees under the Deed of Trust.

statutes of limitations, that certain of her claims required judicial abstention, and that the Amended Complaint otherwise failed to state a plausible claim.

THE DISTRICT COURT'S DISMISSAL RULING

On March 8, 2018, the Honorable Theodore D. Chuang issued a Memorandum Opinion (the "3/8/18 Opinion") and entered an Order granting, *inter alia,* Wells Fargo's Motion to Dismiss and dismissing the Amended Complaint in its entirety (the "3/8/18 Order"). Apx. 16-34. The District Court ruled that Ms. McClain's first seven (7) causes of action asserted against Wells Fargo, all of which related "to her mortgage loan modification and the servicing of her mortgage loan," were time-barred. Specifically, the District Court ruled that Ms. McClain's claims for fraud, conspiracy to commit fraud, unjust enrichment, negligent infliction of emotional distress, and a statutory violation of the PHIFA and the MMFPA were subject to the general three-year statute of limitations. Apx. 24. The District Court further ruled that Ms. McClain's TILA claim was subject to either a one or three-year limitations period, and that her RICO claim was subject to a four-year limitations period. Apx. 25. Even under the longest of these limitations periods, the District Court ruled that Ms. McClain's claims were untimely on the face of the Amended Complaint:

> McClain's mortgage claims largely stem from her loan modification, which she asserts was fraudulent in that it converted her adjustable-rate mortgage to a fixed-rate mortgage without her knowledge, and resulted in the improper misapplication of the funds she paid pursuant to the loan modification and the imposition of various fees not properly disclosed. For example, her TILA claim asserts that Wells Fargo failed to disclose in a Truth-in-Lending Statement, the true costs of the 2007 loan modification arising from the change to a fixed-rate mortgage. As she admits, the loan modification took place in 2007, and the instances of misapplication of funds and imposition of improper fees occurred at

> various points in 2007 and 2008. Based on the face of the Amended Complaint, McClain's mortgage claims, filed in 2017, therefore appear to be untimely.

Apx. 25. In rejecting Ms. McClain's tolling or concealment arguments, the District Court correctly ruled that these arguments were negated by her admissions in the 2009 Bankruptcy:

> Even if the [District] Court accepts McClain's assertions that she did not learn all facts relevant to her claims at the time of the loan modification, McClain's argument is undone by her 2009 bankruptcy proceedings, in which she raised substantially the same complaints about the handling of her loan modification and the servicing of her mortgage that she alleges here.

Apx. 26; *see also*, Apx. 27 (finding that by "2011, McClain had actually uncovered facts underlying her fraud claims, and she had more than sufficient information to conduct a reasonable inquiry, exercising due diligence, that would have uncovered her conspiracy, unjust enrichment, TILA and RICO claims, as well as the bulk of her negligent infliction of emotional distress claim."). The District Court also recognized that under Maryland law, there is no cause of action for negligent infliction of emotional distress. Apx. 27.

Regarding her claims under the PHIFA, MMFPA and Regulation O (which was inferred in her PHIFA claim), in which Ms. McClain alleged that there was an illusory offer of a loan modification made in the 2009 Bankruptcy, the District Court ruled that even accepting the allegations as true, the 2009 Bankruptcy was closed on September 25, 2012, and "accrual necessarily occurred before that date." Apx. 28. Thus, the District Court ruled that "[a]ll of McClain's mortgage claims are therefore dismissed" as time-barred. *Id.*

With respect to Ms. McClain's Fair Debt Collection Practices Act ("FDCPA") claims, the District Court likewise ruled that they were time barred, observing that "McClain references 2012 as the date of the allegedly improper debt collections practices and does not identify any incident of debt collection within one year of the date of the complaint." Apx. 28. Accordingly, the District Court concluded that "there is no basis which this Court may infer that McClain has asserted a plausible FDCPA violation stemming from conduct within the limitations period." Apx. 29.

In addition, the District Court declined to entertain Ms. McClain's collateral attack on the Bankruptcy Court's orders holding that her recourse for those orders was to challenge them through bankruptcy appeals, which she had done. *See* Apx. 29-30 and footnote 1 herein. Likewise, the District Court elected to abstain from considering Ms. McClain's "foreclosure fraud" claims on the grounds that the foreclosure case against the Property is still pending in the Circuit Court for Prince George's County and the District Court is "precluded from exercising jurisdiction to resolve McClain's complaints about perceived irregularities in the pending foreclosure proceedings." Apx. 31.

Ms. McClain noted an appeal of the dismissal of her civil suit on April 4, 2018, to the United States Court of Appeals for the Fourth Circuit. In her brief to the Fourth Circuit, Ms. McClain questioned whether the District Court fairly and impartially decided the case and whether the District Court based its determination on false or flawed facts. Wells Fargo opposed her brief arguing that the District Court acted fairly and impartially in issuing a well-reasoned opinion based upon arguments

presented to it by both sides and judicially noticeable public records. On October 4, 2018, the Fourth Circuit affirmed the decision of the District Court finding that the Fourth Circuit "perceive[d] no reversible error" and specifically finding that there is "***no merit*** to [Ms.] McClain's contentions on appeal that the district court was biased against her and that the court's determinations were tainted by a mistaken view of the facts." *See* Apx. 37 and footnote thereon (emphasis added).

Nevertheless, Ms. McClain's Petition to this Court is based on her unfounded belief that the District Court was biased against her, as a *pro se litigant*, and, thus, purportedly violated her right to due process even though it gave consideration to each of the arguments raised by her below.

In seeking certiorari review of the Fourth Circuit's *per curiam* opinion affirming the decision of the District Court, Petitioner has not identified any basis for this Court's review, nor has she articulated any public interest or important federal question of law that requires this Court's consideration. The principal purpose for certiorari review "is to resolve conflicts among the United States courts of appeals and state courts concerning the meaning of provisions of federal law," none of which have been identified in the Petition. *See Braxton v. United States*, 500 U.S. 344, 347 (1991) (citing Supreme Court Rule 10.1, now Supreme Court Rule 10(a)). Accordingly, the Petition for Writ of Certiorari should be denied.

ARGUMENT

I. Reasons For Denying The Petition

Nothing in the Petition meets the criteria set forth in Supreme Court Rule 10. The Fourth Circuit did not "[enter] a decision in conflict with the decision of another United States court of appeals on the same important matter; ... [decide] an important federal question in a way that conflicts with a decision by a state court of last resort; or ... so far [depart] from the accepted and usual course of judicial proceedings, or [sanction] such a departure by a lower court, as to call for an exercise of this Court's supervisory power." Supreme Court Rule 10(a). Nor did it decide "an important question of federal law that has not been, but should be, settled by this Court, or ... an important federal question in a way that conflicts with relevant decisions of this Court." Supreme Court Rule 10(c). Instead, the Fourth Circuit affirmed the well-reasoned opinion of the U.S. District Court finding that the claims asserted by Ms. McClain in the underlying Complaint filed on February 13, 2017, were predicated upon a 2007 Loan Modification Agreement she admits to signing, and were time-barred under all of the state and federal laws and causes of action identified in the Complaint.

II. The Petitioner Has Been Afforded Ample Due Process

The entirety of Ms. McClain's Petition rests upon her flawed belief that she was denied due process under the Fourteenth Amendment of the U.S. Constitution when the District Court dismissed her Amended Complaint for failure to state a timely claim against Wells Fargo. Specifically, Ms. McClain contends that there are

four (4) areas in Judge Chuang's Opinion which she claims "show [she] was deprived of [her] constitutional right to be heard ... [specifically:]

i. an assessment based on the Federal Rules of Civil Procedure without considering when all 5 elements aligned, presented a no-win situation.

ii. the Court's suppressing the truth of the evidence (Doc 117) hindered the court's ability to perform its impartial tasks of adjudging cases.

iii. in the place of justice, there is judicial misconduct.

iv. Orders based on the filing status: self-represented."

Petition at p. 9, ¶ 17 (internal quotation marks omitted).

"An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950). This Court has explained that the scope of property rights protected, and the process that is due, is "created and [its] dimensions are defined by existing rules or understandings that stem from an independent source such as state law—rules or understandings that secure certain benefits and that support claims of entitlement to those benefits." *Bd. of Regents v. Roth*, 408 U.S. 564, 577 (1972).

Ms. McClain has been afforded more than adequate due process in her numerous and lengthy filings in this case, as well as in the many other cases in which she has asserted the same or similar claims against Wells Fargo. Her own Appendix to this Petition reflects her repeated efforts to renegotiate or to declare void the LMA.

Although she may not have been granted an oral hearing on the motion to dismiss below, Ms. McClain received her opportunity to be heard in writing and had the chance to offer amendments to her claims in a futile attempt to cure the deficiency. The fact that her claims were dismissed as untimely does not constitute a violation of her due process right to be heard. Further, under the local rules of the United States District Court there is no requirement that an oral hearing be granted. *See* USDC- MD Local Rule 105.6 ("Counsel may (but need not) file a request for hearing. Unless otherwise ordered by the Court, however, all motions shall be decided on the memoranda without a hearing."). "Simply because a party was not afforded an oral hearing does not necessarily mean he has been denied due process." *Monumental Health Plan, Inc. v. Department of Health and Human Services,* 510 F. Supp. 244, 248 (D. Md. 1981). Accordingly, the lack of an oral hearing on Wells Fargo's Motion to Dismiss below does not amount to a violation of Ms. McClain's due process rights.

A. Ms. McClain's Claims Were Untimely

Stripped of its editorial comments and rhetoric, the Petition offers no authority in support of this Court's review. It was and is clear that all of Ms. McClain's claims rise and fall on the date when she discovered that her interest rate was converted from an adjustable rate mortgage to a fixed rate under the LMA. The Petitioner admits that she discovered this fact in March 2008. Apx. 19. In fact, she argues in her Petition to this Court that "From ***2008***-2014 Wells Fargo maintained I agreed to the change of the interest rate term..." *See* Petition p. 7, ¶ 3 (emphasis added). Moreover, in liberally construing her allegations, the District Court held that Ms.

McClain had knowledge of the factual allegations on which she bases her claims of Wells Fargo's alleged wrongdoing, at the latest by June of 2011, when she filed her Objection to the Amended Proof of Claim in the 2009 Bankruptcy (*see* Apx. 66-1 and 66-2).[3] Thus, the District Court correctly found that all of the Petitioner's claims relating to the servicing and modification of her mortgage (Counts I through VIII of the underlying Complaint) were time-barred.

Under Maryland law, "a civil action at law shall be filed within three years from the date it accrues unless another provision of the Code provides a different period of time within which an action shall be commenced." Md. Code Ann., Cts. & Jud. Proc. Art. § 5-101. It is well-settled law that fraud, conspiracy to commit fraud, unjust enrichment, infliction of emotional distress, and the Protection of Home Owners In Foreclosure Act/Maryland Mortgage Fraud Protection Act are subject to Maryland's general three (3) year statute of limitations. *See,* Md. Code Ann. Cts. & Jud. Proc. § 5-101; *Windesheim v. Larocca*, 116 A.3d 954, 969 (Md. 2015) and *Jason v. Nat'l Loan Recoveries, LLC*, 134 A.3d 421, 430 (Md. Ct. Spec. App. 2016). Claims under TILA and the FDCPA are subject to their one-year statutes of limitation, and RICO is governed by a four-year limitations period. *See,* 15 U.S.C. § 1640(e) (TILA); 15 U.S.C. § 1692k(d) (FDCPA); and *Rotella v. Wood*, 528 U.S. 549, 553 (2000)

[3] In fact, by June 2, 2011, Ms. McClain represented to the Bankruptcy Court in her 2009 Bankruptcy that "[t]he Debtor has attempted to bring this discrepancy to Wells Fargo's attention on numerous occasions without success." Apx. 66-2, ¶ 11. Based on her own admissions regarding her "discovery" in 2008, and her Objection to the Proof of Claim filed in 2011, the District Court correctly found that Ms. McClain's claims accrued not later than June 2, 2011.

(confirming RICO's four-year statute of limitations). Thus, under even the longest of limitations periods applicable to the claims asserted against Wells Fargo below, the District Court correctly found that Ms. McClain's claims should have been asserted no later than 2015. As she did not file her Complaint until February 13, 2017, the District Court properly ruled that all of Ms. McClain's claims were time-barred. The Court of Appeals, having reviewed the record below, correctly "perceived no reversible error" in the District Court's ruling, as there was no error at all.

B. The Federal Rules Precluded Ms. McClain's Untimely Claims

In her Petition (and her brief below), Ms. McClain suggests that the claims did not accrue until she had knowledge of all *five (5)* elements of her fraud claim. Ms. McClain confuses the burden of pleading with the discovery rule and its impact on the accrual date of her claims. Petition at pp. 10-11, ¶¶ 23-27. Specifically, she asserts that she was required to have knowledge of "all 5 elements for legal fraud," cites to secondary authority from other jurisdictions, and misconstrues phrases from the District Court's opinion. The burden of pleading for the purposes of Federal Rule of Civil Procedure 9(b) is not the rubric for considering the discovery rule and whether a claim is timely brought.

> Maryland applies the discovery rule, which provides that an action accrues when the claimant in fact knew or reasonably should have known of the wrong. The discovery rule considers actual knowledge that is express cognition, or awareness implied from knowledge of circumstances which ought to have put a person of ordinary prudence on inquiry (thus, charging the individual) with notice of all facts which such an investigation would in all probability have disclosed if it had been properly pursued.

Bresler v. Wilmington Trust Company, 348 F. Supp. 3d 473, 483 (D. Md. March 28, 2018) appeal docketed (quoting *Poffenberger v. Risser*, 431 A.2d 677, 680-81 (Md. 1981) (internal citations and quotation marks omitted); *see also*, *Martin Marietta Corp. v. Gould, Inc.*, 70 F.3d 768, 771 (4th Cir. 1995). "Accrual occurs when some evidence of legal harm has been shown, even if the precise amount of damages is not known, and even if the plaintiff has only suffered trivial injuries. ... The dispositive issue in determining when limitations begin to run is when the plaintiff was put on notice that he may have been injured." *Fairfax Sav. F.S.B. v. Weinberg & Green,* 685 A.2d 1189, 1201-02 (Md. Ct. Spec. App. 1996).[4] The District Court further made clear that the assertions set forth by Ms. McClain, with the assistance of counsel, in her 2011 Objection to the Proof of Claim filed in her 2009 Bankruptcy reflected that she had full knowledge at the time that she "may have been injured." Thus, the District Court and Court of Appeals properly found that her claims were time-barred under the applicable federal rules and that her invocation of the discovery rule could not save her claims from her own earlier admissions.

C. The Petition Shows No Bias or Judicial Misconduct

Ms. McClain believes that because the District Court entered a ruling against her, there must have been judicial misconduct or bias against her as a *pro se* litigant. In support of this assertion, the Petitioner attempts to overlay a certain tone to the

[4] In light of her admissions in this case and those in the 2009 Bankruptcy, the District Court also properly rejected Ms. McClain's reliance on letters written in 2014 in response to her complaints to Wells Fargo to support her claim that she did not know of the "fraud" until she received those letters.

language and phrases used by the District Court in its Opinion. For example, in Paragraph 25 of the Petition, Ms. McClain asserts that the District Court "unfairly used the word 'fixing,' [which she contends is] a prejudicial word associated with illegal activity." Petition at p. 11, ¶ 25. Notably, when read in context, it is plain to see that the District Court's use of the word "fixing" did not imply illicit activity, but rather referred to the conversion of her adjustable interest rate to a *fixed* one under the LMA. Similarly, in Paragraph 29, Ms. McClain suggests that the District Court's use of the word "estimation" (an innocuous synonym for an appraisal of the language in the LMA), reflected an "untruth."

The District Court's opinion reflects that it considered the arguments of each party, construed in a light most favorable to the Petitioner, but was bound by Ms. McClain's own damaging admissions in her Amended Complaint, as well as the Consent Order in her 2009 Bankruptcy. Thus, the District Court properly considered the pleadings in this case, as well as judicially noticeable records under Rule 201 of the Federal Rules of Evidence, to determine that Ms. McClain's claims were not timely raised, were barred by *res judicata*, and otherwise were not actionable. Such findings do not reflect bias or judicial misconduct, but rather a clear and consistent application of state and federal law.

D. The District Court's Ruling Was Not "Tainted by Fraud"

Much of Ms. McClain's Petition questions whether the District Court relied upon accurate factual documents and filings from the bankruptcy actions or whether the representations contained in those filings were fraudulent. For example, Ms.

McClain asserts that "Order 117 [i.e., the Consent Order entered in the 2009 Bankruptcy] is a fraud" but offers no basis for this assertion. Petition at p. 13, ¶ 37; *see also,* ¶¶ 32-39. Notably, the Order on which the District Court bases its finding as to when the Petitioner had notice of her claims was a Consent Order entered into by Petitioner when she had the assistance of counsel. As a matter of public record, it is a judicially noticeable record under Rule 201 of the Federal Rules of Evidence. To the extent Ms. McClain disagreed with the Consent Order entered in her 2009 Bankruptcy, any such challenges needed to be asserted in that case and/or in a timely appeal therefrom, and were not. Thus, the District Court properly elected to abstain from any review or attack upon an Order of the United States Bankruptcy Court for the District of Maryland for good reason.[5]

CONCLUSION

The District Court's ruling below was proper, unbiased, and anything but novel or complex. The Fourth Circuit's *per curiam* Opinion affirming the ruling of the District Court and dispensing of any notion of bias or reliance upon a tainted view or misstatements of the facts was well-supported by the record. Nothing in the Petition implicates any of the considerations for certiorari review as set forth in Supreme Court Rule 10. This case simply does not present a novel or pressing issue worthy of

[5] Ms. McClain has repeatedly made such assertions, but the 2009 Bankruptcy has not been appealed and, thus, the *Consent* Order entered therein is a binding decision. With respect to the 2016 bankruptcy, that bankruptcy is still pending with appeals having been noted, one of which was recently affirmed by the Fourth Circuit.

this Court's consideration. As such, Wells Fargo respectfully requests that the Petition for a Writ of Certiorari be denied.

Respectfully Submitted,

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