No. ________

IN THE SUPREME COURT OF THE UNITED STATES

THE ESTATE OF SAIID FOROUZAN;
AKBAR RASTGOO DAMAVANDI, AS
SPECIAL ADMINISTRATOR; AND
R. PHILLIP NOURAFCHAN,

Petitioners,
v.

BRANCH BANKING AND TRUST COMPANY,

Respondent.

The Estate of Saiid Forouzan; Akbar Rastgoo Damavandi, as Special Administrator; and R. Phillip Nourafchan Application to Justice Anthony M. Kennedy to Extend Time to File Petition for Writ of Certiorari to Review Judgment of the United States Court of Appeals for the Ninth Circuit

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Application for Extension of Time

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RULE 29.6 STATEMENT

Petitioners, The Estate of Saiid Forouzan, Akbar Rastgoo Damavandi, as Special Administrator, and R. Phillip Nourafchan, are not nongovernmental corporations and therefore have no parent corporations or shareholders.

SUMMARY

Pursuant to 28 U.S.C. § 2101(c) and Supreme Court Rules 13.5, 22 and 30.3, Petitioners, The Estate of Saiid Forouzan, Akbar Rastgoo Damavandi, as Special Administrator, and R. Phillip Nourafchan (collectively "Petitioners"), respectfully request Justice Anthony M. Kennedy as Circuit Justice of the United States Court of Appeals for the Ninth Circuit to extend the time for Petitioners to file their Petition for Writ of Certiorari ("Petition"). Petitioners request a 60-day extension, making the new deadline August 3, 2018, to file their Petition to review the decision issued by the United States Court of Appeals for the Ninth Circuit in Case No. 16-17079. (Attached as Exhibit "A"). The Court of Appeals ("Ninth Circuit") issued its decision on March 5, 2018. The current deadline to file the Petition for writ of certiorari will expire without an extension on June 4, 2018. The application has been filed at least 10 days before the date a petition would be due. This Court has jurisdiction under 28 U.S.C. § 1254(1) to review this case.

BACKGROUND

This case presents a substantial and important question of federal law regarding whether the United States District Court of Nevada ("District Court") lacked subject matter jurisdiction under the *Rooker–Feldman* doctrine.[1] The federal

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[1] *See District of Columbia Court of Appeals v. Feldman, 460 U.S. 462 (1983), Rooker v. Fidelity Trust Co.,* 263 U.S. 413 (1923) (requiring that absent congressional authority, federal courts other than the Supreme Court should not function as courts of appeals for state court decisions).

action filed before the District Court was a de facto appeal from two prior state court actions.

As Petitioners demonstrated in their papers, the District Court lacked subject matter jurisdiction under the *Rooker–Feldman* doctrine. In making its decision, the District Court as upheld by the Ninth Circuit decided an important federal question in a way that conflicts with a decision of the state court of last resort, and renders certiorari appropriate.

ARGUMENT

Understanding that an extension of the time for filing a Petition for Writ of Certiotari requires good cause, Petitioners respectfully ask Justice Kennedy, as Circuit Justice for the Ninth Circuit, to extend the time for Petitioners to file their Petition. Petitioners request that the deadline be extended by 60-days, so that the new deadline would be August 3, 2018. To establish good cause for their request, Petitioners make the follow arguments in favor of extending the deadline:

First, the Petitioners are in the midst of settlement negotiations with the Respondent which may lead to global settlement resolution, between a number of parties including but not limited to the Petitioners, Respondent, R&S St. Rose, LLC, R&S St. Rose Lenders, LLC and Commonwealth Land Title Insurance Company and which will render certiorari to the United States Supreme Court moot. Given the number of parties involved, there is a level of complexity to such proposed settlement negotiations. The parties engaged in a three-day mediation session in January 2018, but no resolution was reached. However, in May 2018, the parties to this action as well as the third parties involved in related lawsuits have expressed their willingness to engage in further settlement discussions, and the parties are in the midst of scheduling a settlement conference to occur in the next month or two. The Petitioners request the extension for the purpose of preserving their rights in the event that the settlement is not reached and fully resolved globally.

Second, Petitioners have changed appellate counsel. Petitioners were represented by lead counsel Richard Rosenthal, Esq. during the pendency of the Ninth Circuit Appeal. Now, with respect to the Petitioners' Petition for Certiorari, the law firm of HOLLEY DRIGGS WALCH, et al. is the new lead counsel representing Petitioners, and as such, needs additional time to review the record and arguments.

Third, counsel for Respondent confirmed that Respondent does not oppose this extension.

CONCLUSION

Accordingly, for good cause shown, Petitioners respectfully request an extension of 60 days, or until **August 3, 2018**, to file their petition for certiorari.

Dated: May 25, 2018

Respectfully submitted,

/s/ F. Thomas Edwards

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NOT FOR PUBLICATION

FILED

MAR 5 2018

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

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

BRANCH BANKING AND TRUST COMPANY, Plaintiff-Appellee, v. THE ESTATE OF SAIID FOROUZAN; et al., Defendants-Appellants.	No. 16-17079 D.C. No. 2:14-cv-01947-APG-PAL MEMORANDUM*

Appeal from the United States District Court
for the District of Nevada
Andrew P. Gordon, District Judge, Presiding

Argued and Submitted February 13, 2018
San Francisco, California

Before: HAWKINS and TALLMAN, Circuit Judges, and JACK,** District Judge.

Appellants challenge the denial of their motion to dismiss and the adverse grant of summary judgment, contending that the district court lacked subject matter jurisdiction, misapplied Nevada's issue preclusion law, and erroneously determined

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* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The Honorable Janis Graham Jack, United States District Judge for the Southern District of Texas, sitting by designation.

that Branch Banking & Trust Company's ("Branch Banking") claims are timely. We have jurisdiction under 28 U.S.C. § 1291 and affirm.

The *Rooker–Feldman* doctrine is inapplicable in this case. That "narrow" doctrine, *Skinner v. Switzer*, 562 U.S. 521, 532 (2011), applies when a plaintiff "both asserts as [its] injury legal error or errors by the state court *and* seeks as [its] remedy relief from the state court judgment," *Kougasian v. TMSL, Inc.*, 359 F.3d 1136, 1140 (9th Cir. 2004). Because Branch Banking seeks relief from the Appellants for their breach of a guarantee agreement (the "Guarantee") based on its ownership of the Guarantee under a 2011 assignment agreement (the "2011 Assignment"), its complaint does not constitute a de facto appeal of the prior state court actions, which addressed earlier, separate assignments that were found to be invalid. *See id*.

Nor was it error to hold that the Nevada state court actions did not preclude Branch Banking from litigating its right to collect under the Guarantee. For issue preclusion to apply, Nevada law requires that the issue sought to be precluded be identical to an issue actually and necessarily litigated in a final ruling on the merits in prior litigation. *Five Star Capital Corp. v. Ruby*, 194 P.3d 709, 713 (Nev. 2008) (en banc). The first and second Nevada state court actions did not address the transfer of the Guarantee under the 2011 Assignment. Therefore, the issue before the district court was neither identical to an issue in the Nevada state court actions nor actually and necessarily litigated in those actions. *Cf. State, Univ. & Cmty. Coll.*

Sys. v. Sutton, 103 P.3d 8, 16 (Nev. 2004) (pre-termination hearing findings did not preclude issues in later litigation involving different employment contract).

Finally, the parties agree that a six-year statute of limitations applies. Even assuming that Nevada's accrual standard rather than the deferred accrual standard under the Federal Institutions Reform, Recovery and Enforcement Act of 1989, 12 U.S.C. § 1821(d)(14)(B), applies to Branch Banking's claims, the claims are timely. Contrary to Appellants' argument, the Nevada Supreme Court has indicated that a cause of action for breach of a loan agreement accrues, at the earliest, on the date of default rather than the date of last payment. *See Taylor Bean & Whitaker Mortg. Corp. v. Vargas*, 408 P.3d 560 (Nev. 2017) (unpublished).

Branch Banking submitted loan documents indicating that default did not occur until January 2009—less than six years before Branch Banking filed its complaint. Although Appellants argued that the borrower issued its last check on the loan in September 2008, they did not dispute the January 2009 date of default. Consequently, the cause of action for breach of the Guarantee could not have accrued prior to the January 2009 date of default. *See id.*

Costs are awarded to Plaintiff-Appellee.

AFFIRMED.