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November 10, 2022

The Honorable Scott S. Harris
Clerk of the Court
United States Supreme Court
One First Street, NE
Washington, DC 20543

Re: *Flagstar Bank, FSB v. William Kivett, et al.*, No. 22-349

Dear Mr. Harris:

I write on behalf of petitioner Flagstar Bank, FSB, to oppose any extension of time, beyond December 7, 2022, in which to respond to the petition in this case. An extension to December 7 will adequately address respondents' stated basis for seeking the extension, whereas an extension beyond December 7 will prejudice petitioner by preventing the case from being heard and decided on the merits this Term.

Petitioner did not seek an extension of the time to file its certiorari petition. Instead, petitioner filed its petition one day in advance of the unextended deadline and less than a month after the Second Circuit issued the most recent decision addressing the question presented—and expressly disagreeing with the Ninth Circuit's holding.

Petitioner acted expeditiously to permit the Court to consider its petition and, if granted, decide the case this Term because further delay would cause petitioner substantial prejudice. The decision below affirms (with modest adjustment) a damages award against petitioner of over \$9 million, as well as an injunction ordering petitioner to pay interest on all mortgage-escrow accounts that it maintains on behalf of California residents. Although the injunction has been stayed pending appeal, the costs of the over \$9-million bond that petitioner has posted and post-judgment interest on the damages award continue to accrue. In the meantime, petitioner faces legal uncertainty as to whether other state laws purporting to require petitioner to pay interest on mortgage-escrow accounts must be followed or are preempted, which directly impacts how petitioner manages these consumer escrow accounts today.

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The petition was filed October 11, 2022. A response to the petition was originally due on November 14. Respondents initially waived their response, and the petition was distributed on October 25. After the Court called for a response on October 27, the Court reset the deadline for a response to November 28. Respondents have sought an extension to avoid having the brief due the Monday after Thanksgiving, which would interfere with attorney travel schedules. An extension to December 7 would address that concern. If, however, the Court grants respondents an extension beyond December 7, and petitioner does not waive at least part of the 14-day waiting period for distribution, the petition will not be distributed again until December 28 to be considered at the January 13, 2023 Conference. Under the Court's ordinary practices, that delay would prevent the Court from deciding the case this Term if certiorari is granted.

To preserve the Court's ability to grant the petition and resolve the case this Term and to prevent further prejudice to petitioner, petitioner thus respectfully opposes any extension beyond December 7, 2022.

Respectfully submitted,



Jonathan Y. Ellis
*Counsel of Record for Petitioner Flagstar
Bank, FSB*

cc: Steve W. Berman, counsel of record for respondents