No. 14-56755

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

DONALD M. LUSNAK,

Plaintiff-Appellant,

v.

BANK OF AMERICA, N.A.,

Defendant-Appellee.

On Appeal From The United States District Court
For the Central District Of California
Hon. George H. King, District Judge

NOTICE OF ERRATTA IN OFFICE OF THE COMPTROLLER OF THE CURRENCY'S AMICUS CURIAE BRIEF

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To the Court and all parties to the above-entitled action:

PLEASE TAKE NOTICE of errata inadvertently included in the Office of the Comptroller of the Currency's ("OCC") amicus curiae brief as filed with the Court and served on the parties. The errata is as follows:

Page 1, Line 7: Replace "pre-date" with "post-date."

The corrected page of the brief is attached hereto.

DATED: April 24, 2018 Respectfully submitted,

s/ Douglas B. Jordan

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INTRODUCTION

The panel decision errs in matters of fundamental importance to the national banking system. The Petition for Rehearing En Banc therefore presents the rare case that justifies rehearing. The panel incorrectly inferred a Congressional intent to undo preexisting preemption determinations based on what the Court concedes to be inapposite legislation—provisions enacted by the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No 111-203 ("Dodd-Frank"). The effective dates of the Dodd-Frank provisions relied upon by the Court post-date the transactions at issue, and, accordingly, have no application to the facts of this case.

Even if this legislation had been in effect when the transactions at issue occurred, the panel's conclusion that Dodd-Frank altered the law material to this case was still mistaken. The panel comprehensively misinterpreted *Barnett Bank of Marion County, N.A. v. Nelson*, 517 U.S. 25 (1996) and the cases that decision rests upon. These cases establish the appropriate analysis under the Supremacy clause regarding the National Bank Act, even as amended by Dodd-Frank. That misreading of *Barnett* led to a compound of errors ultimately resulting in a conclusion that the California escrow statute is not preempted. For these reasons, en banc review is warranted.

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on April 24, 2018.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

s/ Douglas B. Jordan
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April 24, 2018