No. 23-308

In the

Supreme Court of the United States

PAUL STEELMAN, INDIVIDUALLY AND AS TRUSTEE OF THE STEELMAN ASSET PROTECTION TRUST, ET AL.,
Petitioners,

v.

ERNEST BOCK LLC,
Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF IN OPPOSITION

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COUNTERSTATEMENT OF QUESTION PRESENTED

Did the Ninth Circuit properly apply *Colorado River Water Conversation District v. United States*, 424 U.S. 800 (1976), and its progeny, when it vacated a stay after finding a substantial doubt that the parallel state court litigation would be an adequate vehicle for the complete and prompt resolution of the all of the issues between the parties?

CORPORATE DISCLOSURE STATEMENT

Respondent Ernest Bock, LLC is a limited liability company and has no parent corporation and no publicly held company owns 10 percent or more of its stock.

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INTRODUCTION

In presenting what is purported to be a wide-ranging Circuit split but is instead merely a compilation of Circuits applying the same test to the different factual and procedural circumstance of the cases before them, the Petition does not establish any qualifying, let alone "compelling," reason to grant certiorari. SUP. CT. R. 10. The Ninth Circuit below did not issue a decision in conflict with the decision of another United States Circuit Court of Appeals or a state court of last resort on an important federal matter. SUP. CT. R. 10(a). Nor did the Ninth Circuit decide an important issue of federal law in the first instance or in a way that conflicts with this Court's decisions. SUP. CT. R. 10(c). In sum, Petitioners seek review of a correctly decided appeal on an issue of well-settled law under the guise of a fabricated "Circuit split".

Over the course of the past forty years, the *Colorado River* doctrine has been examined, explained, and endorsed by this Court and the Circuits alike. *See, e.g., Colorado River Water Conservation District v. United States*, 424 U.S. 800 (1976); *Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.,* 460 U.S. 1, 16 (1983); *Gulfstream Aerospace Corp. v. Mayacamas Corporation*, 485 U.S. 271, 274 (1988); *Wilton v. Seven Falls Co.*, 515 U.S. 277 (1995). Contrary to Petitioners' unfounded conclusion that "*Moses H. Cone* represents the Court's last significant word on *Colorado River*", in several cases subsequent to *Colorado River* and *Moses H. Cone*, this Court has

ensured that the doctrine is well-settled, properly applied, and that no conflicts existed.

In *Gulfstream*, 485 U.S. at 274, this Court confirmed its *Colorado River* precedent and reaffirmed that:

> [a]n order granting a *Colorado River* stay [. . .] necessarily contemplate[s] that the federal court will have nothing further to do in resolving any substantive part of the case because a district court may enter such an order **only if it has full confidence** that the parallel state proceeding will 'be an adequate vehicle for the complete and prompt resolution of the issues between the parties.

(emphasis added).

A few years later, this Court granted certiorari "to resolve Circuit conflicts concerning the standard governing a district court's decision to stay a declaratory judgment action in favor of parallel state litigation." *Wilton*, 515 U.S. 281. In *Wilton*, this Court, once again, confirmed that under "*Colorado River Water Conservation Dist. V. United States* [. . .] and *Moses H. Cone Memorial Hospital v. Mercury Constr. Corp.*, [. . .] district courts must point to 'exceptional circumstances' to justify staying or dismissing federal proceedings" outside the context of federal declaratory judgment actions. Importantly, *Wilton* presented this Court with an opportunity to address or clarify any conflicts pertaining to the *Colorado River* doctrine and

the Circuits' applications thereof; however, no such discussion was had.

This Court has continued to reaffirm *Colorado River* and its progeny without the need to provide additional guidance. *See e.g., Lexmark Intern. v. Static Control*, 572 U.S. 118, 126 (2014) (recent affirmation of the principle that "a federal court's obligation" to hear and decide' cases within its jurisdiction are virtually unflagging); *Sprint Communications, Inc. v. Jacobs*, 571 U.S. 69 (2013) (same); *Elk Grove Unified School Dist. v. Newdow*, 542 U.S. 1, 12 (2004) (the Court again emphasized the "heavy obligation to exercise jurisdiction" it discussed in *Colorado River*), *abrogated on other grounds by Lexmark Intern.*, 572 U.S. 118 (2014).

It has long been settled by this Court that the discretion created by *Colorado River* is an exception to the otherwise "virtually unflagging obligation" of federal courts to "exercise the jurisdiction conferred on them by Congress." *Wilton,* 515 U.S. at 284 (citing *Colorado River*, 424 U.S. at 813, 817-18). That is, the crux of the *Colorado River* doctrine is the presence of "exceptional" circumstances displaying "the clearest of justifications" for federal deference to the local forum in the interest of "wise judicial administration, giving regard to conservation of judicial resources and comprehensive disposition of litigation." *Colorado River*, 424 U.S. at 817–19, 1236; *see also Moses H. Cone*, 460 U.S. at 16 ("*only the clearest of justification will warrant*" deferral) (quoting *Colorado River,* 424 U.S. at 819) (emphasis original).

Critically, the determination that exceptional circumstances are present "does not rest on a mechanical checklist, but on a careful balancing of the important factors **as they apply in a given case**, with a balance heavily weighted in favor of the exercise of jurisdiction." *Moses H. Cone,* 460 U.S. at 16 (emphasis added); *see also Handy v. Shaw, Bransford, Veilleux & Roth* 325 F.3d 346, 353 (D.C. Cir. 2003) (same). Those factors include, but are not limited to, "the assumption by either court of jurisdiction over a *res*, the relative convenience of the fora, avoidance of piecemeal litigation, the order in which jurisdiction was obtained by the concurrent fora, whether and to what extent federal law provides the rules of decision on the merits, and the adequacy of state proceedings." *Wilton*, 515 U.S. at 285-86. Paramount in a *Colorado River* "exceptional circumstances" assessment is the determination,

> that the parallel state-court litigation will be an adequate vehicle for the complete and prompt resolution of the issues between the parties. **If there is any substantial doubt as to this, it would be a serious abuse of discretion to grant the stay or dismissal at all**. Thus, the decision to invoke Colorado River necessarily contemplates that the federal court will have nothing further to do in resolving any substantive part of the case, whether it stays or dismisses.

(emphasis added) *Moses H. Cone*, 460 U.S. at 28.

The weight to be given to any one factor may vary greatly from case to case, depending on the particular circumstances; however, confidence that the state-court litigation will completely and promptly resolve the federal matter is a necessary predicate to a stay. *Id.* at 16.

Ultimately, this Court's precedents direct District and Circuit Courts to balance numerous, non-exhaustive factors in a highly case-specific, fact-bound analysis of a federal proceeding, an independent state proceeding, and the relationship between the two. That idiosyncrasy is at its pinnacle when a court determines whether "there is any substantial doubt" "that the parallel state-court litigation will be an adequate vehicle for the complete and prompt resolution of the issues between the parties." *Id.* The Ninth Circuit's decision below is a clear example of the *Colorado River* test in action. The Seventh Circuit's decision in *Loughran v. Wells Fargo Bank, N.A.*, 2 F.4th 640 (7th Cir. 2021), relied on by Petitioners as demonstrating the presence of a Circuit split, is a similarly clear example of that test in action. The analysis of each court case cannot be separated from the reality that the test is being applied to innumerable variables emanating from the consideration of multiple factors, most critically the presence of "any substantial doubt" of complete and prompt resolution, across the facts and procedural postures of multiple litigations. But that separation is precisely what Petitioners rely on to conjure their "Circuit split."

This Court has repeatedly spoken on these issues. The Circuit Courts of Appeal apply the same test dictated by this Court, and they are well-aligned in how they apply it. Hence, no "compelling" reasons exist under SUP. CT. R. 10 to grant the petition for a writ of certiorari and, as such, the Petition should be denied.

STATEMENT[1]

In 2011, Respondent Ernest Bock LLC ("Bock") was approached by an entity known as Steel Pier Associates, LLC ("SPA") to finance a business venture in Atlantic City, New Jersey. [App. 4a]. Initially, the uncertainty as to SPA's liquidity and ability to post collateral left Bock skeptical about providing the funding. [*Id.*] To foster confidence in the proposed project's success, SPA informed Bock that Paul Steelman, an internationally acclaimed architect and developer from Las Vegas, Nevada, was not just a partner on the project, but was willing to personally guarantee all the proposed financing with his wife (the "Steelmans")[2]. [ECF No.[3] 133 at 30]. To substantiate their ability to secure the debt of SPA, the Steelmans

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[1] Respondent hereby incorporates by reference the "Background" section of the opinion rendered by the United States Court of Appeals for the Ninth Circuit for a further statement of the facts of this case. [Appendix to the Petition for Writ of Certiorari ("App.") 4a-8a].

[2] Paul and Maryann Steelman as individuals are herein referred to as the "Steelmans".

[3] The United States District Court District of Nevada Civil Docket for Case No.: 2:19-cv-01065-JAD-EJY is cited herein as "ECF No."

provided their joint 2010 personal financial statement which depicted a claimed net worth of over fifty million dollars ($50,000,000.00). [*Id.* at 31-32]. Relying on the represented net worth and guarantee, on August 3, 2011, Bock agreed to loan SPA $4.4 million for the purchase of an amusement park and tourist attraction on the Atlantic City Boardwalk known as the Steel Pier. [*Id.* at 33]. A few weeks later, additional financing for SPA's project[4] on the Steel Pier was sought. [*Id.* at 37]. Similar to before, the Steelmans provided their joint 2011 personal financial statement which, again, depicted a claimed net worth of over fifty million dollars ($50,000,000.00). [*Id.* at 38-39]. On September 28, 2011, a $2.2 million loan was extended, and which was also secured by the Steelmans. [*Id.* at 41-42].

In October 2015, after SPA's default on both loans, Bock filed suit in New Jersey Superior Court (the "Superior Court Act") seeking repayment by the Steelmans as guarantors on the loans. [App. 39a]. The Superior Court found, as a matter of law, "that the terms of the guaranty agreements permitted Bock to pursue [the Steelmans] as guarantors of the loans [,]" and granted summary judgment in favor of Bock on the unpaid loans. [*Id.* 41a]. As such, a final judgement on less than all claims, inclusive of interest, was entered in favor of Bock in the amount of $11,831,365.32. [*Id.* 43a]. The Judgment was docketed

[4] In addition to forming Steel Pier Associates, LLC, the Catanosos and Paul Steelman also formed Cape May Entertainment Associates, LLC ("CEA") which was also a named borrower on the second loan. For ease of reference and to match the format of former briefing, we refer collectively to the parties as SPA.

by the Superior Court Clerk on March 28, 2019. [ECF No. 133 at 56] Bock filed an Application of Foreign Judgment with the District Court of Clark County, Nevada on April 30, 2019, to domesticate the Judgment. [*Id*. at 57]. Bock subsequently recorded that domesticated judgment with the Clark County Recorder's Office on September 10, 2019 (the domesticated judgment included in the phrase, the "Judgment"). [*Id*. at 58].

The Steelmans made no voluntary payments to satisfy the Judgment. [*Id*. at 59]. Thus, Respondent, began post-judgment discovery and collection proceedings in April 2019. [*Id*. at 64] Through such post-judgment discovery, Bock quickly uncovered a scheme to protect the Steelmans' assets from the consequences of the guarantees via, *inter alia*, fraudulent transfers and the creation of trusts to shield asset. [*Id*. at 90]. The scheme began to unfold after it became apparent that SPA would default on the loans, and the scheme appeared to be on-going. [*Id*.]. Based on this uncovered wrongful conduct, on June 21, 2019, Respondent filed its federal action in Nevada (the "Federal Action") as a creditor of the Steelmans to, *inter alia*, reverse the fraudulent transfers and break the trusts so that the Steelmans' assets were available to pay obligations under the guarantees.

As post-judgment discovery and discovery in the Federal Action unfolded, [ECF No. 225 at 5], Respondent began to unearth the astounding breadth of the Steelmans' unlawful activities after they realized SPA would not be able to pay Respondent,

including, *inter alia*, creating a number of trusts that they controlled and that were subsequently used to warehouse essentially all of their ownership interests in real and personal property, from cars and boats, to houses, to stocks, to entity memberships, all the way down to their toothbrushes. [ECF No. 133 at 91]. To protect his income Paul Steelman assigned his substantial salary, for no consideration, to a limited liability company owned by one of his trusts. The Steelmans in turn utilized that company's bank accounts and credit cards to finance their lavish lifestyle, going so far as to pay court-ordered sanctions against Paul Steelman from the company's account. [*Id*.] The Steelmans also turned other companies they owned or controlled into alter egos to further the scheme, providing personal benefits to family members, paying lawyers and accountants to assist in perpetrating the scheme, and taking ownership of personal assets like cars to provide a further level of protection against collection. [*Id*.] Indeed, Petitioners engaged in fraudulent transfers, fraud by mail and wire, and substantial abuse of the corporate form to carry out their scheme both before and after judgment was entered in the New Jersey Action and during the pendency of the Superior Court and Federal Action. [*Id*.] Throughout the Federal Action, Bock not only prevailed in maintaining its claims against the Steelmans and others in the face of numerous merit-based motions to dismiss, but Bock's motions to amend to add additional claims were met with the same success in spite of Petitioners' oppositions thereto.

Meanwhile, the Superior Court Action continued with numerous crossclaims and

counterclaims, including a significant number of third-party claims, none of which related to the Steelmans' efforts to shield their assets from the guarantees or Judgment. [App. 40a-41a].

On October 13, 2021, more than two years after the Federal Action commenced, the Superior Court Appellate Division in New Jersey vacated the Judgment not on substantive grounds or on a finding against Bock, but rather the Appellate Division determined that summary judgment was granted prematurely. [App. 37a-59a]. Despite the vacation of the Judgment, as the Ninth Circuit recognized, Bock retained standing in the Federal Action as a claimed creditor under the guarantees. [*Id*. 10a-11a]. Implicit in that conclusion is that Bock never needed to bring the Superior Court Action and never needed to seek payment under the guarantees in New Jersey before it sought to protect its rights as a creditor in the Federal Action.

Nonetheless, after the Judgment was vacated, Petitioners filed motions to stay the Federal Action pending an outcome in the New Jersey Action. [*Id*. 2a-3a]. Bock opposed the stay, arguing that: (1) a stay could not be justified by either the court's docket management powers or the Colorado River doctrine; and (2) pausing the federal litigation would afford the Steelmans additional time to hide assets and thus shield them from Bock. [*Id*. 8a]. In the alternative, Bock asked that if the district court were to issue a stay, it should also require Defendants, as a condition, to post $35.5 million bond [*Id*.]. On March 2, 2022, the district court issued a stay under *Colorado River* and

declined to require a bond. [*Id.*]. Bock timely appealed, arguing that this case does not present the "exceptional circumstances" required for a *Colorado River* stay. [*Id.*] On August 3, 2023, the United States District Court for the District of Nevada reversed. [*Id.*]

The Superior Court Action remains in fact discovery guided by a special master with depositions on-going and no date set for completion of discovery, filing of dispositive motions, or trial.

REASONS TO DENY THE PETITION

I. There is No Conflict Between the Ninth Circuit's Decision Below and Decisions of This Court or of Other Federal Courts of Appeals

The Ninth Circuit's narrow, fact-bound inquiry under the well-established *Colorado River* doctrine is not in conflict with any decision of this Court or decisions of the other Circuits. Since no viable Circuit split is implicated, the Petition attempts to conjure a "split" by cherry-picking and oversimplifying the opinions of the other Circuits. The Petition, however, disregards the crucial element, consistent amongst all the Circuits' decisions, related to the application of a *Colorado River* stay: the Ninth Circuit's holdings rest narrowly on the particular facts of this case. Notwithstanding the fact-specific inquiries undertaken by each of the Circuits, their approaches remain materially consistent. Each Circuit cites, and relies on, the specific "exceptional circumstances" test dictated in *Colorado River,* 424 U.S. at 813, and *Moses H. Cone*, 460 U.S. at 26, with critical consideration

given to whether there is "any substantial doubt" of complete and prompt resolution.

In *Colorado River,* this Court "authoritatively define[d] the metes and bounds of the *Colorado River* doctrine" when it instructed:

> The doctrine of abstention, under which a District Court may decline to exercise or postpone the exercise of its jurisdiction, is an **extraordinary and narrow** exception to the duty of a District Court to adjudicate a controversy properly before it.

(emphasis added) *Colorado River Water Conservation Dist.,* 424 U.S. 800, 813, (1976).

While contemplating the "extraordinary and narrow" scope of the general abstention doctrines, when this Court carved out the *Colorado River* doctrine, it explained:

> Given [the virtually unflagging obligation of the federal courts to exercise the jurisdiction given them], and the absence of weightier considerations of constitutional adjudication and state-federal relations, the circumstances permitting the dismissal of a federal suit due to the presence of a concurrent state proceeding for reasons of wise judicial administration are considerably **more limited than the circumstances appropriate for abstention.**

(emphasis added) *Id.*

Expanding and explaining this newly formed doctrine and its limited scope, in *Moses H. Cone* this Court instructed that "to justify the *surrender* of [] jurisdiction" under the *Colorado River* doctrine, "the task is to ascertain whether there exist 'exceptional circumstances' [and] the 'clearest of justifications[.]" *Moses H. Cone Mem'l Hosp.,* 460 U.S. 1, 26, (1983). Supplementing its discussion of as to the "bounds" of *Colorado River*, this Court explained that:

> When a district court decides to dismiss or stay under Colorado River, it presumably concludes that the parallel state-court litigation will be an adequate vehicle for the complete and prompt resolution of the issues between the parties. If there is any substantial doubt as to this, it would be a serious abuse of discretion to grant stay or dismissal at all. Thus, the decision to invoke Colorado River necessarily contemplates that the federal court will have nothing further to do in resolving any substantive part of the case, whether it stays or dismisses.

Id., at 28.

The Petition contends that "the courts of appeals operate with different parallelism paradigms, producing disparate results in addressing *Colorado River* motions." [Pet. 15]. That contention is meritless, as, at most, the differences amongst the Circuits are a result of simple variations in the Circuits' phrasing of

the test when applied to the particular cases before them and not any difference in substantive analysis. *See Currie v. Grp. Ins. Comm'n*, 290 F.3d 1, 12 (1st Cir. 2002) (citing *Moses H. Cone* "substantial doubt" language); *Woodford v. Cmty. Action Agency of Greene Cnty., Inc.,* 239 F.3d 517, 523 (2d Cir. 2001) (same); *McMurray v. De Vink*, 27 Fed. Appx. 88, 92 (3d Cir. 2002) (same); *vonRosenberg v. Lawrence*, 849 F.3d 163, 168 (4th Cir. 2017) (same); *Nat'l Cas. Co. v. Gonzalez*, 637 Fed. Appx. 812, 817 (5th Cir. 2016) (same); *Chellman-Shelton v. Glenn*, 197 Fed. Appx. 392, 394 (6th Cir. 2006) (same); *Lumen Const., Ins. v. Brant Const. Co., Inc.*, 780 F.2d 691 (7th Cir. 1985) ("state-court litigation [must] be an adequate vehicle for the complete and prompt resolution of the issue between the parties"); *Spectra Communications v. City of Cameron, Mo.*, 806 F.3d 1113 (8th Cir. 2015) (quoting *Cottrell v. Duke*, 737 F.3d 1238, 1245 (8th Cir. 2013) (quoting *Fru-Con*, 574 F.3d at 535) ("parallelism is determined and abstention may be acceptable when the state court litigation is pending that means "there is a 'substantial likelihood that the state proceeding will fully dispose of the claims presented in the federal court."); *Ernest Bock, LLC v. Steelman*, 76 F.4th 827, 832 (9th Cir. 2023) [11a] (citing *Moses H. Cone* "substantial doubt" language); *Fox v. Maulding*, 16 F.3d 1079, 1081-82 (10th Cir. 1994) (citing "complete and prompt" resolution language); *Flowers v. Fulton Cnty. Sch. Sys.*, 654 Fed. Appx. 396 (11th Cir. 2016) (it would have been a "'serious abuse of discretion for the court to abstain'" because the party "made no showing that the state action would have been 'an adequate vehicle for the complete and prompt resolution of the

issues between the parties'"); *Kahn v. Gen. Motors Corp.*, 889 F.2d 1078, 1082 (Fed. Cir. 1989) (same).

In its grasp at manufacturing a conflict amongst the Circuits, the Petition significantly misconstrues the decisions of other Circuits. Relying on *Loughran*, Petitioners claim that the "Seventh Circuit disagrees with the Ninth Circuit"; however, Petitioners' contention is devoid from understanding that the different outcomes amongst the Circuits are due to the different operative facts. In *Loughran*, the Court acknowledges the criticality assigned to the variation of facts that may be dispositive to the outcome of a *Colorado River* analysis. It specifies that:

> [d]ifferent considerations may be more pertinent to some cases, and one or more of these factors will be irrelevant in other cases. A district court is free to "take[e] into account a special characteristic of the case before it" in assessing whether the circumstances meriting abstention are 'exceptional.'"

Loughran, 2 F.4th 640, 647 (7th Cir. 2021) (citing *Depuy Synthes Sales, Inc. v. OrthoLA, Inc.*, 953 F.3d 469, 477 (7th Cir. 2020).

While it is true, as Petitioners cite, that the *Loughran* court stated that "one-sidedness is neither unusual nor fatal to a finding that the two cases are parallel", Petitioners improperly cherry-pick this language and mischaracterize it as a means of supporting the fallacious "split". In actuality, the Seventh Circuit maintains the equilibrium amongst

the Circuits, and agrees, that "at bottom, the 'critical question' is whether there is a substantial likelihood that the state litigation will dispose of all claims presented in the federal case." *Loughran*, 2 F.4th at 645 (quoting *Huon v. Johnson & Bell, Ltd.*, 657 F.3d 641, 646 (7th Cir. 2011)). It is the particular facts of *Loughran* that distinguish it from the Ninth Circuit's decision below. Where, in the present case, neither the District Court nor the Ninth Circuit attacked Respondent's chance of success in the Superior Court Action or the Federal Action, the Seventh Circuit treated the litigants' claims almost mockingly:

> This case concerns one of the Loughrans' many maneuvers. In January 2019, after their state-court foreclosure litigation was already over seven years old, the Loughrans accused U.S. Bank and its counsel of committing fraud in the course of those proceedings. In May 2019, sensing that their fraud claim was going nowhere, the Loughrans tried their luck in federal court, with a complaint that copied and pasted large swaths of text from their state-court filings.
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> . . .
>
> During the first two years after the suit was filed, the Loughrans attempted to obtain a Home Affordable Modification Program (HAMP) loan modification through Wells Fargo. Only in 2014, when it appeared that a modification was not

forthcoming, did the Loughrans file an answer, affirmative defenses, and counterclaim in the foreclosure action. . .

. . .

In October 2015, U.S. Bank moved to strike and dismiss the Loughrans' affirmative defenses and counterclaim. . . The Loughrans did not oppose U.S. Bank's motion, and so their affirmative defenses and counterclaim were stricken.

. . .

U.S. Bank followed up with a motion for summary judgment. That triggered a two-year fight over the Loughrans' right to obtain a copy of the Trust PSA and to view their original note. Eventually the Loughrans obtained a copy of the PSA, which (they say) revealed to them for the first time that Wells Fargo—not U.S. Bank—was in physical possession of the original note (albeit on U.S. Bank's behalf and in its capacity as Servicer) . . .

. . .

Around this time, the Loughrans also filed a petition to remove the judge presiding over the foreclosure action for cause . . . The judge denied that motion, after which the Loughrans voluntarily

dismissed their third-party complaint against Wells Fargo.

. . .

In January 2019, U.S. Bank filed another motion for judgment of foreclosure. In response, the Loughrans raised three new affirmative defenses: (1) U.S. Bank lacked standing to bring the foreclosure action because it did not have physical possession of the note; (2) the foreclosure complaint was null and void because Wells Fargo had brought it in U.S. Bank's name but without U.S. Bank's authorization; and (3) U.S. Bank, Wells Fargo, and their lawyers had perpetrated a fraud on the state court by representing that U.S. Bank was in possession of the note.

U.S. Bank moved to strike the affirmative defenses. On June 14, 2019, while that motion was pending, the Loughrans filed the federal action now before us. . . The allegations of fraud and misrepresentations in the federal complaint mirror the Loughrans' affirmative defenses in state court. In fact, substantial portions of the federal complaint are copied verbatim from the Loughrans' filings in the state foreclosure action . . .

. . .

> The Loughrans' main contention in both suits is that U.S. Bank lacked standing to pursue the foreclosure action because Wells Fargo, not U.S. Bank, had physical possession of the Loughrans' note. The Loughrans further allege that U.S. Bank, Wells Fargo, and their lawyers perpetrated a fraud against the Loughrans and the state court when they repeatedly asserted that U.S. Bank was the "note holder." (They never explain why Wells Fargo, U.S. Bank, and the Law Firm Defendants would be motivated to commit such a fraud, particularly when the Loughrans' default is not in dispute, but for present purposes we do not need to explore this anomaly.)
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> . . .
>
> Looking more broadly at the stay, it is plain that the Loughrans have been engaged in what we have called "reactive litigation." *Lumen*, 780 F.2d at 693 (cleaned up). These suits, "filed by one who is a defendant in a prior proceeding based upon the same factual controversy," are usually "motivated by a desire to delay the progress" of the initial proceeding; "to impose travel burdens on one's adversary; to take advantage of procedural opportunities only available in one forum; to obtain the supposed advantages of being a plaintiff; to avoid

> perceived prejudice in the initial forum; or to benefit perceived prejudice in the second forum."

2 F.4th at 643-51.

The Seventh Circuit concluded that, under those facts, "it was rational for the district court to determine that the state court litigation will be an adequate vehicle for the complete and prompt resolution of the larger dispute." [*Id.* at 649].

There is no reason to believe that the Seventh Circuit would have treated Respondent's claims in the same manner, nor is there any reason to believe that the Ninth Circuit would have treat the Loughran's claims any differently. The Seventh Circuit's conclusion came only after trouncing the plaintiffs before it and relentlessly casting doubt on their claims. The Ninth Circuit's discussion of Respondent's claims contains no such questioning or doubtful bent, and the court repeatedly emphasized its analysis applied to "this case." [App. 25a] ("We simply find a substantial doubt in this case that the New Jersey state proceedings will completely resolve the federal action.")'; [22a] (". . . we find such a 'substantial doubt' in this case . . ."); [App. 24a] ("In the context of this case . . .). The distinction is that one case appears doomed to fail and the other does not.

Similarly, Petitioners contend that the Eighth Circuit takes a "more precise" approach than the Seventh Circuit. Yet, the decisions of the Eighth Circuit simply follow the same approach, looking at the particulars of the matter before it, to determine

whether there is a "substantial likelihood that the state proceeding will fully dispose of the claims presented in federal court." *Cottrell*, 737 F.3d at 1245 (citation omitted). In carrying out that function, the court in *Cottrell* provided examples of issues to consider in reaching that determination, but it did not provide a different test. *Id.* ("To determine whether parallel proceedings exist, we have compared the sources of law, required evidentiary showings, measures of damages, and treatment on appeal for each claim.") *Id.*; *see also African Methodist Episcopal Church v. Lucien,* 756 F.3d 788, 797-98 (5th Cir. 2014) (considering the specifics of the two cases to determine whether there was "a substantial likelihood that the sate litigation will dispose of all claims presented in the federal case"); *Gold-Fogel v. Fogel,* 16 F.4th 790, 800–01 (11th Cir. 2021) (considering the specifics of the two cases to determine that "[b]ecause the only issue remaining in the federal litigation is substantially similar to a significant issue in the State-Court Action, *Colorado River's* requirement that the state and federal proceedings be parallel is satisfied here."); *Great Am. Ins. Co. v. Gross*, 468 F.3d 199, 208 (4th Cir. 2006) (comparing the specifics of the two cases and determining a stay was inappropriate because it was doubtful the state matter would completely and promptly resolve the federal matter).

In sum, each of the Circuit Courts apply effectively the same analysis to determine whether cases are parallel. Each analyzes the specific circumstances of the state and federal cases before it and determines whether the "parallel state-court litigation will be an adequate vehicle for the complete

and prompt resolution of the issues between the parties." The test is a constant. It is only a variation in facts that yields different outcomes, and different outcomes in different, factually-diverse cases does not create a circuit split.

II. This Case Is A Poor Vehicle For Addressing The Question Presented Because The Issue is Not Outcome Determinative

When the resolution of legal questions would not change the result below, this Court does not grant certiorari. *See Sommerville v. United States*, 376 U.S. 909 (1964) (resolution of Circuit split not outcome-determinative and so certiorari denied); *see also Klehr v. A.O. Smith Corp.*, 521 U.S. 179, 192 (1997) (same).

This case does not present a circumstance where this Court must speculate about whether a question is outcome determinative; the Ninth Circuit explicitly explained that it is not. The Ninth Circuit explained that "***even if*** [it] found that the parallelism factor did not preclude a stay", the outcome of this case would not be controlled. [App. 22a]. The Ninth Circuit expressed that position having already considered the other *Colorado River* factors. [App. 14-15a]. The court noted that it found five factors "neutral or inconsequential," two weighed in favor of a stay, and the parallelism factor weighed against a stay. [App. 14-16a]. In light of the strong prerogative to maintain federal jurisdiction, the Ninth Circuit treats neutral factors as weighing against a stay rather than being completely discounted from the analysis. *R.R. St. &*

Co. v. Transp. Ins. Co., 565 F.3d 966, 973 (9th Cir. 2011) (applying the "source of law" factor the court found neutral as being in favor of denying a stay, as distinguished from the two factors the court found "irrelevant," which were not balanced); *see also Woodford*, 239 F.3d at 522 (Second Circuit holding that "the facial neutrality of a factor is a basis for retaining jurisdiction, not for yielding it."); *accord Niagara Mohawk Power Corp. v. Hudson River-Black River Regulating Dist.*, 673 F.3d 84, 101 (2d Cir. 2012). Thus, even if the Ninth Circuit did not find it was obligated to vacate the stay as a result of its parallelism analysis, it would still have found Respondent entitled to a vacation of the stay. Therefore, it is clear that this Court's review is not warranted as the Petition does not present an outcome-determinative issue.

III. The Ninth Circuit's Decision on Parallelism is Correct on the Merits

Petitioners' characterization of the question presented is divorced from the totality of the circumstances present in this case that led to the Ninth Circuit's application of the parallelism factor. The Petition wrongly contends:

> This case involves a plaintiff who initially relied on a favorable state court ruling to file this action in federal court—only to see the basis for his federal suit vanish when his state court judgment was vacated for further proceedings. Respondent then persisted in the federal

> litigation, despite its duplicative nature and wastefulness if the New Jersey courts ultimately rejects his state law claim.

[Pet. 26].

Contrary to the Petitioner's assertion, Respondent did not rely "on a favorable state court ruling" to file the Federal Action. In reality, the relevance of the Judgment is merely that it was a catalyst in Respondent discovering the Steelmans had engaged in significant fraudulent conduct. That fraudulent conduct was not, and is not, being litigated in any form or fashion in the Superior Court Action, and it turns primarily on questions of Nevada and Federal law. In fact, Respondent would have had standing to bring the Federal Action even if Respondent never filed the Superior Court Action or otherwise sought to collect on the guarantees. The Ninth Circuit specifically ruled against Petitioners' claim that "without a New Jersey judgment, Bock cannot establish an injury in fact[.]" [App. 10a]. Indeed, *even with a vacated Judgment*, the Ninth Circuit found that "Bock has sufficiently alleged an injury in fact at this stage of the litigation[.]" [App. 11a]. Notably, this ruling is not appealed by Petitioners.

Moreover, Petitioners' argument that Respondent "str[uck] back with parallel federal suits" or was "seeking to evade unwanted state court proceedings," [Pet. 26], is illogical. Respondent filed the Federal Action shortly after it had prevailed in the

Superior Court Action and continued that Federal Action for more than two years before the Judgment was vacated. Even the District Court agreed that "the claims in each are largely distinct from one another, and the relevant witnesses and evidence for each are present in the respective state." [App. 33a].

In reality, Respondent "persisted in the federal litigation" because the Federal Action is an entirely separate litigation from the Superior Court Action, it is necessary to protect Respondent's interests, and there is substantial doubt that resolution of the Superior Court Action will resolve the Federal Action. In addition to the multitude of different parties, different causes of action, and different forms of relief sought, the proposed evidence to be used in the respective actions is indicative of the lack of duplication. That is, discovery in the federal action produced millions of pages of documents, very few of which are part of, or relevant to, the Superior Court Action. If the Federal Action does not proceed, and Respondent prevails in the Superior Court Action, it will be left to litigate for years more to collect on the guarantees that were indisputably executed by the Steelmans. Meanwhile, fact discovery still continues in the Superior Court Action, with no discovery end date, no dispositive motion date, and no trial date set.

Finally, unlike the plaintiffs in *Loughran*, who the Seventh Circuit plainly demonstrated had suffered defeat after defeat over a decade of litigation and were grasping at any straw to maintain a foothold in litigation, Respondent has had provisional success in *both* the Superior Court Action and the Federal

Action. Here, in order to defeat the need for the Federal Action, not only must the Steelmans prevail on a defense, but they must also prevail on a defense that **entirely eliminates** the enforceability of the guarantees. While the Judgment was vacated, the basis for that vacation was the Judgment's prematurity, not a determination that Respondent's claim lacked merit. By the same token, Respondent has prevailed against attacks in the Federal Action, surviving numerous motions to dismiss relating to the merits and successfully moving to amend in the face of opposition to add further claims against the Steelmans, their entities, their trusts, and the participants in their schemes. Therefore, there is substantial doubt that the Superior Court Action is an adequate vehicle for the complete and prompt resolution of the Federal Action

In sum, the Ninth Circuit was correct in finding that the Federal Action and the Superior Court Action are not parallel and in vacation the *Colorado River* stay on that basis.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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