

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA**

FEDERAL HOUSING FINANCE
AGENCY,

Plaintiff,

v.

DELOITTE & TOUCHE, LLP,

Defendant.

No. 1:16-cv-21221

**UNOPPOSED MOTION OF THE FEDERAL HOUSING FINANCE AGENCY AS
CONSERVATOR OF FANNIE MAE FOR VOLUNTARY DISMISSAL AND
SUPPORTING MEMORANDUM OF LAW**

Howard N. Cayne
(admitted *pro hac vice*)
ARNOLD & PORTER KAYE
SCHOLER LLP
601 Massachusetts Avenue NW
Washington, D.C. 20001
Telephone: (202) 942-5000
Facsimile: (202) 942-5999
Howard.Cayne@apks.com

Samuel J. Dubbin, P.A.
Florida Bar No. 328189
DUBBIN & KRAVETZ, LLP
1200 Anastasia Avenue
Suite 300
Coral Gables, Florida 33134
Telephone: (305) 371-4700
Facsimile: (305) 371-4701
sdubbin@dubbinkravetz.com

February 1, 2017

*Counsel for Federal Housing Finance
Agency --- Substituted Plaintiff*

Substituted Plaintiff the Federal Housing Finance Agency (“FHFA” or “Conservator”), as Conservator of the Federal National Mortgage Association (“Fannie Mae”), hereby moves, pursuant to Federal Rules of Civil Procedure 23.1(c) and 41(a)(2), to dismiss this action voluntarily with prejudice. The Conservator has conferred with counsel for Deloitte & Touche LLP (“Deloitte” or “Defendant”), who indicated that it does not oppose this motion. In further support, the Conservator states:

1. On February 29, 2016, a group of 39 individuals and entities who claim to own Fannie Mae stock (“Plaintiffs”) filed suit against Defendant in the Circuit Court for the Eleventh Judicial Circuit in and for Miami-Dade County, Florida.
2. On April 6, 2016, Deloitte removed the action to the U.S. District Court for the Southern District of Florida on the basis of federal question jurisdiction. (ECF No. 1.)
3. FHFA filed a Motion to Substitute itself as the plaintiff on April 12, 2016 (ECF No. 9), and then filed a Renewed Motion to Substitute motion on June 13, 2016 (ECF No. 15). Plaintiffs opposed the Renewed Motion to Substitute and filed a Motion to Remand this action to state court. (ECF Nos. 20, 23.)
4. On January 18, 2017, the Court issued an opinion denying the Motion to Remand and granting FHFA’s Renewed Motion to Substitute. (ECF No. 50.) The Court explained that Plaintiffs’ claims are derivative and that FHFA is the only proper plaintiff pursuant to the succession provision of the Housing and Economic Recovery Act of 2008 (“HERA”), 12 U.S.C. § 4617(b)(2)(A)(i), which provides that the Conservator “immediately succeed[ed] to . . . all rights, titles, powers, and privileges of [Fannie Mae], and of any stockholder, officer, or director.” *Slip op.* at 8-9. The Court held that there is no “manifest conflict of interest”

exception to § 4617(b)(2)(A)(i) that would allow shareholders to bring the claims. *Slip op.* at 10-11.

5. The Conservator has determined not to prosecute the claims against Defendant. Accordingly, pursuant to Federal Rules of Procedure 23.1(c) and 41(a)(2), the Conservator moves to dismiss this action voluntarily with prejudice.

6. Voluntary dismissal is appropriate because, as the Court recognized, the Conservator is the only party who may bring suit on behalf of Fannie Mae, and the Conservator's decision not to bring a suit is within the scope of its statutory powers as Conservator. *See, e.g., Sweeney v. Treasury*, 68 F. Supp. 3d 116, 125-26 (D.D.C. 2014) (explaining that "whether or not to spend Fannie Mae's assets on a lawsuit against Treasury is plainly the type of business decision Congress entrusted to the Conservator in HERA."); *In re Fed. Home Loan Mortg. Corp. Deriv. Litig.*, 643 F. Supp. 2d 790, 798 (E.D. Va. 2009) ("In granting the conservator broad, sweeping authority over Freddie Mac's assets, Congress made it clear that it left to the FHFA, not to Freddie Mac's shareholders, the discretion to decide how best to manage the assets of Freddie Mac. Choosing whether or not to sue particular entities or persons is certainly within that broad discretion.").

7. Additionally, "[i]n order to deny a motion for voluntary dismissal, a district court must find that dismissal will inflict clear legal prejudice on a defendant." *Kellmer v. Raines*, 674 F.3d 848, 851 (D.C. Cir. 2012) (citation and internal quotation omitted). Here, Defendants do not contend that they will suffer "clear legal prejudice" as a result of dismissal with prejudice. Instead, Defendants have indicated to the Conservator that they do not oppose such dismissal. Accordingly, the present motion should be granted. *See id.* at 851-52 (permitting FHFA as

Conservator to dismiss claims voluntarily after being substituted in place of Fannie Mae shareholder plaintiffs when the defendants had not shown “clear legal prejudice”).

Dated: February 1, 2017

Respectfully submitted,

Howard N. Cayne
(admitted *pro hac vice*)
ARNOLD & PORTER
KAYE SCHOLER LLP
601 Massachusetts Avenue NW
Washington, D.C. 20001
Telephone: (202) 942-5000
Facsimile: (202) 942-5999
Howard.Cayne@apks.com

/s/ Samuel J. Dubbin, P.A.
Samuel J. Dubbin, P.A.
Florida Bar No. 328189
DUBBIN & KRAVETZ, LLP
1200 Anastasia Avenue
Suite 300
Coral Gables, Florida 33134
Telephone: (305) 371-4700
Facsimile: (305) 371-4701
sdubbin@dubbinkravetz.com

*Counsel for Federal Housing Finance
Agency --- Substituted Plaintiff*

CERTIFICATE OF SERVICE

The undersigned certifies that, on February 1, 2017, a true and correct copy of the foregoing was filed electronically using the Court's CM/ECF system, causing a true and correct copy to be served on all counsel identified below. I also served the following counsel via e-mail:

<p>Steven W. Thomas steventhomas@tafattorneys.com THOMAS, ALEXANDER & FORRESTER LLP 14 27th Avenue Venice, CA 90291 Telephone: 310.961.2536 Facsimile: 310.526.6852</p>	<p>Peter Prieto pprieto@podhurst.com Matthew Weinshall Email: MWeinshall@podhurst.com PODHURST ORSECK P.A. 25 West Flagler Street, Suite 800 Miami, FL 33130 Telephone: (305) 358-2800 Facsimile: (305) 358-2382</p>
<p>Hector Lombana hlombana@glhlawyers.com GAMBA & LOMBANA, P.A. 2701 Ponce de Leon Boulevard Mezzanine Coral Gables, FL 33134 Telephone: 305.448.4010 Facsimile: 305.448.9891</p>	<p>Miles Ruthberg miles.ruthberg@lw.com Kevin McDonough kevin.mcdonough@lw.com LATHAM & WATKINS LLP 885 Third Avenue New York, NY 10022-4834 Telephone: (212) 906-1200 Facsimile: (212) 751-4864</p>
<p>Matias Rafael Dorta mrd@dortalaw.com DORTA LAW 334 Minorca Avenue Coral Gables, FL 33134 Telephone: 305-441-2299 Fax: 305-441-8849</p>	<p>Peter A. Wald Email: peter.wald@lw.com LATHAM & WATKINS LLP 505 Montgomery Street, Suite 2000 San Francisco, CA 94111-6538 Telephone: (415) 395-0600 Facsimile: (415) 395-8095</p>

<p>Brad F. Barrios Kenneth George Turkel brad.barrios@bajocuva.com kturkel@bajocuva.com BAJO, CUVA, COHEN & TURKEL, P.A. 100 N. Tampa Street Suite 1900 Tampa, FL 33602 Telephone: 813-443-2199 Fax: 813-443-2193</p> <p><i>Counsel for Former Plaintiffs</i></p>	<p>Christopher S. Turner christopher.turner@lw.com LATHAM & WATKINS, LLP 555 Eleventh Street, NW Suite 1000 Washington, DC 20004-1304 Telephone: 202-637-2200</p> <p><i>Counsel for Defendant Deloitte & Touche LLP</i></p>
<p>Thomas Zimpleman, Esq. US Department of Justice 20 Massachusetts Avenue NW Washington, DC 20530 202-514-8095 Email: thomas.d.zimpleman@usdoj.gov</p> <p><i>Counsel for Amicus Curiae United States of America</i></p>	

/s/ Samuel J. Dubbin, P.A.