

**BEFORE THE UNITED STATES JUDICIAL PANEL  
ON MULTIDISTRICT LITIGATION**

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IN RE: FEDERAL HOUSING FINANCE	)	
AGENCY, ET AL., PREFERRED	)	MDL No. 2713
STOCK PURCHASE AGREEMENTS	)	
THIRD AMENDMENT LITIGATION	)	

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**DAVID JACOBS’ AND GARY HINDES’ NOTICE OF SUPPLEMENTAL  
INFORMATION CONCERNING STATE LAW CLAIMS IN THE DELAWARE  
ACTION**

Plaintiffs David Jacobs and Gary Hinds (the “*Jacobs* Plaintiffs”) submit the following to apprise the Panel of recent developments in *Jacobs v. Federal Housing Finance Agency, C.A. No. 15-708* (D. Del.) (“the Delaware Action”). The *Jacobs* Plaintiffs have informed Defendants that they intend to file, pursuant to Fed. R. Civ. P. 41(a)(1)(a), a Notice of Voluntary Dismissal without prejudice of Counts III through X when the stay is lifted in the Delaware Action.<sup>1</sup> Ex. A. Counts III through X of the Complaint in the Delaware Action are the state common law claims against defendants for breach of contract (Counts III and IV), breach of the implied covenant of good faith and fair dealing (Counts V and VI), and breach of fiduciary duty (Counts VII through X). *See* Doc. 1 in the Delaware Action.

After Counts III through X are dismissed, the only remaining claims in the Delaware Action will be Counts I and II, which claim that the Net Worth Sweep violates the General Corporation Law of the State of Delaware with respect to the Federal National Mortgage Association and the Virginia Stock Corporation Act with respect to the Federal Home Loan Mortgage Corporation. None of the actions subject to FHFA’s Motion to Transfer (Doc. 1)

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<sup>1</sup> On March 30, 2016 the District Court stayed proceedings until the Panel rules on the Federal Housing Finance Agency’s (“FHFA”) Motion to Transfer (Doc. 44 in the Delaware Action.).

raises those claims nor were those claims addressed in *Perry Capital LLC v. Lew*, 70 F. Supp. 3d 208 (D.D.C. 2014), presently on appeal to the District of Columbia Circuit Court of Appeals. Further, with the elimination of these claims, no discovery will be needed in the Delaware Action as Counts I and II are both questions of law that can be answered based on facts that are not capable of dispute. It even is possible that the Delaware Action will be completely resolved if the District Court certifies the questions of state corporation law to the Delaware and Virginia Supreme Courts as has already been requested in the Delaware Action. *See* Doc. 21-1.

The *Jacobs* Plaintiffs' application for certification of the state law questions identifies the undisputed facts that are necessary for the Delaware and Virginia Supreme Courts to resolve the respective questions of law (*Id.* at 5-9) and plainly states the two questions of state law (*Id.* at 2). These questions are ripe for resolution now, without the need for any discovery. Accordingly, there would be no benefit to transferring the Delaware Action for pre-trial consolidation with cases that share none of the legal and procedural issues with the Delaware Action. *See* Doc. 21 at 5-7. Because no discovery is needed in the Delaware Action, transfer and consolidation with the other actions subject to FHFA's Motion to Transfer will not encourage the just and efficient conduct of these actions.

As explained in the *Jacobs* Plaintiffs' opposition to FHFA's Motion to Transfer (Doc. 21), even when Counts III through X were pending in the Delaware Action, there was no reason to transfer the Delaware Action for pre-trial consolidation. Now that Claims III through X are no longer at issue, FHFA's Motion to Transfer the Delaware Action is not even colorable. The Panel should deny FHFA's motion.

Respectfully submitted,

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