

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

MIAMI DIVISION

CASE NO. 16-21224-CIV-MORENO

MASTER SGT. ANTHONY R. EDWARDS,
USAF, RETIRED; MASTER SGT.
SALVATORE CAPACCIO, USAF; GATOR
CAPITAL MANAGEMENT, LLC; PERINI
CAPITAL LLC; ALLEN HARDEN; ED
BIERYLA; DOREEN BIERYLA; JORGE
ZAPATA; HIREN PATEL; LOUISE STRANG;
JOHNNA B. WATSON; MELODY
SULLIVAN; AMIT CHOKSI; PHIL MILLER;
JAMES FERGUSON; GORDON INMAN;
SHAUN INMAN; MICHAEL CARMODY;
MATT HILL; JOSEPH WASKE; MARYAM
MOINFAR; WAYNE OLSON; RICH
KIVELA; CHRIS WOSSILEK; and
MATTHEW REED,

Plaintiffs,

vs.

PRICEWATERHOUSECOOPERS, LLP,

Defendant.

DEFENDANT'S NOTICE OF FILING ORDER
ISSUED BY JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

On April 21, 2016, the Court stayed this action pending resolution of the motion that the Federal Housing Finance Agency ("FHFA") filed before the Judicial Panel on Multidistrict Litigation ("JPML") to consolidate and transfer this action. [DE 11] Defendant, PricewaterhouseCoopers LLP ("PwC"), respectfully notifies the Court that the JPML issued an Order yesterday denying FHFA's motion to transfer. A copy of the JPML's Order is attached to this notice. PwC, which has not been served with the Complaint or a summons, appears solely

for the purpose of notifying the Court of the JPML Order and for no other purpose and reserves all rights and defenses available to it.

Dated: June 3, 2016

Respectfully submitted,

/s/ Ramon A. Abadin
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*Counsel for Defendant PricewaterhouseCoopers
LLP*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on June 3, 2016, a true and correct copy of the foregoing was filed electronically with the Clerk of the Court, by using the CM/ECF system, causing a true and correct copy to be served on all counsel of record. I also served the following counsel of record via e-mail.

<p>Steven W. Thomas, Esq. steventhomas@tafsattorneys.com THOMAS, ALEXANDER & FORRESTER LLP 14 27th Avenue Venice, CA 90291 Telephone: (310) 961-2536 Facsimile: (310) 526-6852</p> <p><i>Counsel for Plaintiffs</i></p>	<p>Hector Lombana, Esq. hlombana@glhlawyers.com GAMBA & LOMBANA, P.A. 2701 Ponce de Leon Boulevard Mezzanine Coral Gables, Florida 33134 Telephone: (305) 448-4010 Facsimile: (305) 448-9891</p> <p><i>Counsel for Plaintiffs</i></p>
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<p>Howard N Cayne howard.cayne@aporter.com Arnold & Porter LLP 601 Massachusetts Avenue, NW Washington, DC 20001 Telephone: (202) 942-5000 Facsimile: (202) 942-5999</p> <p><i>Counsel for Federal Housing Finance Agency</i></p>	

/s/Ramon A. Abadin
 Ramon A. Abadin

**UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION**

**IN RE: FEDERAL HOUSING FINANCE AGENCY,
ET AL., PREFERRED STOCK PURCHASE AGREEMENTS
THIRD AMENDMENT LITIGATION**

MDL No. 2713

ORDER DENYING TRANSFER

Before the Panel:* Defendant Federal Housing Finance Agency (FHFA)—conservator for Federal Home Loan Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac)—moves under 28 U.S.C. § 1407 to centralize pretrial proceedings in this litigation in the District of District of Columbia. This litigation consists of four actions pending in four districts, as listed on Schedule A. Additionally, the Panel has been notified of four potentially related actions pending in three districts. Defendants, Jacob Lew, in his official capacity as Secretary of the Treasury, and the U.S. Department of the Treasury (the Treasury Department), support the motion. All responding plaintiffs oppose centralization. Plaintiffs in three actions alternatively suggest centralization in the Eastern District of Kentucky. These plaintiffs, and plaintiffs in the District of Delaware action also alternatively suggest exclusion of the District of Delaware action. A preferred stock investor in Fannie Mae and Freddie Mac, who has served a demand letter on the companies’ boards, argues that his prospective claims are distinguishable from the actions before the Panel.

On the basis of the papers filed and hearing session held, we conclude that centralization is not necessary for the convenience of the parties and witnesses or to further the just and efficient conduct of the litigation. These actions arise from the agreement in August 2012 between FHFA and the Treasury Department to enter into the third amendment of their preferred stock purchase agreement. Specifically, most plaintiffs allege that the third amendment constituted a *de facto* nationalization of Fannie Mae and Freddie Mac that extinguished the private shareholders’ economic interests in the companies by replacing a fixed quarterly dividend with a variable dividend equal to Fannie Mae’s and Freddie Mac’s quarterly earnings, if any, less a small and decreasing capital reserve.

Plaintiffs opposing centralization argue that there are not sufficient common disputed facts to warrant centralization, and that discovery will be minimal. Defendants have not persuasively refuted these arguments. We have held that, “where only a minimal number of actions are involved, the proponent of centralization bears a heavier burden to demonstrate that centralization is appropriate.” *In re: Lifewatch, Inc., Tel. Consumer Prot. At (TCPA) Litig.*, __ F. Supp. 3d __, 2015

* Judge Marjorie O. Rendell, Judge Lewis A. Kaplan, and Judge Catherine D. Perry took no part in the decision of this matter.

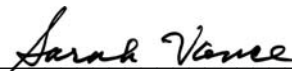
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WL 6080848, at *1 (J.P.M.L. Oct. 13, 2015). Defendants have not met that burden here, where just four actions are pending involving primarily common legal, rather than factual, issues. While FHFA has notified the Panel of four potentially-related actions, these actions differ in significant ways from the actions on the motion. Two actions do not name FHFA or the Treasury Department as defendants, but rather are brought against the auditors of Fannie Mae and Freddie Mac. The other two actions are “books and records” actions, which plaintiffs argue are expedited proceedings that will be slowed down by the pace of centralized proceedings. Were there a stronger case for centralization here—a larger number of cases or a great deal of overlapping discovery—these differences in a small number of potential tag-along actions might be less significant. But as it stands, they lend weight to the conclusion that centralization is not appropriate.

Defendants’ arguments supporting centralization focus largely on the threshold jurisdictional issues that will be present in all actions. In each action, defendants will argue that the Housing Economic Recovery Act of 2008 bars judicial review of the third amendment, and that plaintiffs lack standing because FHFA has succeeded to “all rights, titles, powers, and privileges” of shareholders. *See* 12 U.S.C. §§ 4617(f), 4617(b)(2)(a)(i), (f). But these are common legal, rather than factual, questions, and we have held that “[m]erely to avoid two federal courts having to decide the same issue is, by itself, usually not sufficient to justify Section 1407 centralization.” *In re: Medi-Cal Reimbursement Rate Reduction Litig.*, 652 F. Supp. 2d 1378, 1378 (J.P.M.L.2009). We also have held though that litigation involving common legal questions is appropriate for centralization when it will eliminate duplicative discovery and prevent inconsistent pretrial rulings, including with respect to identification of an underlying administrative record. *See In re: Polar Bear Endangered Species Act Listing and § 4(d) Rule Litig.*, 588 F. Supp. 2d 1376, 1377 (J.P.M.L. 2008). That is not the case here. Whether these actions will share disputes regarding the sufficiency of the administrative record is purely hypothetical. Moreover, several plaintiffs already have been provided with relevant discovery in a similar action pending in the Court of Federal Claims, making further discovery in these actions potentially unnecessary.

IT IS THEREFORE ORDERED that the motion for centralization of these actions is denied.

PANEL ON MULTIDISTRICT LITIGATION



Sarah S. Vance
Chair

Charles R. Breyer
R. David Proctor

Ellen Segal Huvelle

**IN RE: FEDERAL HOUSING FINANCE AGENCY,
ET AL., PREFERRED STOCK PURCHASE AGREEMENTS
THIRD AMENDMENT LITIGATION**

MDL No. 2713

SCHEDULE A

District of Delaware

JACOBS, ET AL. v. FEDERAL HOUSING FINANCE AGENCY, ET AL.,
C.A. No. 1:15-00708

Northern District of Illinois

ROBERTS, ET AL. v. FEDERAL HOUSING FINANCE AGENCY, ET AL.,
C.A. No. 1:16-02107

Northern District of Iowa

SAXTON, ET AL. v. FEDERAL HOUSING FINANCE AGENCY, ET AL.,
C.A. No. 1:15-00047

Eastern District of Kentucky

ROBINSON v. FEDERAL HOUSING FINANCE AGENCY, ET AL.,
C.A. No. 7:15-00109