

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

ANTHONY R. EDWARDS, *et al.*,

Plaintiffs,

v.

PRICEWATERHOUSE COOPERS, LLP,

Defendant.

No. 1:16-cv-21224

**FHFA'S EMERGENCY MOTION TO COMPEL PRODUCTION  
OF SETTLEMENT AGREEMENT**

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

Samuel J. Dubbin, P.A.  
Florida Bar No. 328189  
DUBBIN & KRAVETZ, LLP  
1200 Anastasia Avenue  
Suite 300  
Coral Gables, Florida 33134  
Telephone: (305) 357-9004  
Facsimile: (305) 371-4701  
sdubbin@dubbinkravetz.com

October 25, 2016

*Counsel for Federal Housing Finance  
Agency --- Movant to Substitute for Plaintiffs*

The Federal Housing Finance Agency (“FHFA”) respectfully moves the Court to order Plaintiffs to produce the settlement agreement between Plaintiffs and PricewaterhouseCoopers (PwC) on or before this Friday, October 28, 2016. FHFA (as Freddie Mac’s Conservator) requires access to the actual terms of the agreement in advance of the hearing scheduled for October 31, 2016 (*see* Order Setting Hearing, entered Oct. 24, 2016) (D.I. 51)), to determine whether such settlement terms may have resolved or eliminated the concerns that had compelled the filing of the Conservator’s Motion to Substitute, and the subsequent filing of the Conservator’s pending Motion that the Court reconsider its denial of those Motions as moot. The Conservator respectfully submits that it would be in the interests of justice and judicial efficiency to enable the Conservator to determine whether the terms underlying the parties’ stipulation to dismiss this action involve the transfer of consideration to the shareholder Plaintiffs, in exchange for the purported transfer or extinguishment of the claims alleged in Plaintiffs’ complaint that FHFA contends are the property of FHFA in its role as Conservator of Freddie Mac. FHFA asks the Court to treat this as an emergency motion and Order production of the Agreement before the close of business October 28, so FHFA can properly consider its contents in its preparation for the October 31 hearing.

#### **BACKGROUND**

Plaintiffs—individual and institutional shareholders of Freddie Mac—filed this suit in Florida state court on March 9, 2016, asserting two claims by each Plaintiff against PwC: (a) negligent misrepresentation; and (2) aiding and abetting alleged breaches of fiduciary duty purportedly owed Freddie Mac’s shareholders by FHFA, the Department of the Treasury, and Freddie Mac’s officers and directors. *See, e.g.*, Compl. ¶¶ 98-116. On April 6, 2016, PwC

removed the suit to this Court on the basis of federal question jurisdiction. *See* Notice of Removal [D.I. 1].

The Conservator promptly moved to substitute itself as the only proper plaintiff for this lawsuit because Congress had by statute expressly transferred to the Conservator, for the duration of the conservatorship, “all rights, titles, powers, and privileges” of Freddie Mac, “*and of any* [Freddie Mac] *stockholder*,” including the exclusive power to enforce, or to decide not to enforce, the shareholder claims that are sought to be enforced by the Plaintiffs herein (emphasis added).<sup>1</sup> Plaintiffs, in turn, moved to remand the suit to Florida state court. *See* Plaintiffs’ Mot. for Remand (filed Aug. 15, 2016) [D.I. 28]. Both these motions were fully briefed and ready for the Court’s consideration.

On October 11, 2016, Plaintiffs and PwC notified the Court that they had settled the case. Immediately thereafter, the Court ordered those parties to submit to the court “all papers related to the settlement including any order of dismissal stating specific terms and conditions” by October 18, 2016. *See* Notice of Practice Upon Parties’ Notice of Settlement (entered Oct. 12, 2016) [D.I. 47]. Though Plaintiffs and PwC later filed a stipulation of dismissal, to our knowledge they never filed the settlement agreement, and FHFA has been unable to obtain a copy of that agreement.

Shortly thereafter the Court denied FHFA’s pending motion to substitute and Plaintiffs’ pending motion to remand as moot in light of the proposed settlement. *See* Order Denying All Pending Motions as Moot (filed October 13, 2016) [D.I. 48]. FHFA respectfully asked the Court to reconsider its order dismissing the motion to substitute as moot. *See* FHFA’s Mot. to

---

<sup>1</sup> *See* FHFA’s Renewed Mot. to Subst. as Plaintiff and Supporting Memo. of Law, at 1-17 (filed Aug. 17, 2016) [D.I. 33] (“Mot. to Subst.”).

Reconsider Denial of Mot. to Subst. and Supporting Mem. of Law (filed October 17, 2016) [D.I. 49] (“Recon. Mot.”).

On October 18, 2016, Plaintiffs and PwC filed an executed Stipulated Voluntary Dismissal With Prejudice [D.I. 50]. The Court then scheduled a hearing to address “all pending matters.” Order Setting Hearing, at 1 (entered Oct. 24, 2016) (D.I. 51)).

### **ARGUMENT**

FHFA presumes that in light of the parties’ stipulation of dismissal the settlement agreement already has been executed. FHFA requests that the Court order Plaintiffs to produce the settlement agreement so that FHFA may give appropriate consideration to its terms in determining how best to fulfill its statutory duties in advance of the October 31 hearing. Plaintiffs will suffer no prejudice by producing the settlement agreement. FHFA is willing to agree to any reasonable confidentiality restrictions.

Pursuant to Local Rule 7.1(a)(3)(A), the undersigned certifies that FHFA attempted to resolve the issues raised in this motion by requesting that Plaintiffs and PwC voluntarily produce their settlement agreement in order to allow FHFA to prepare for the hearing ordered by this Court on Monday, October 31, 2016, and that failing such production, FHFA would be required to file a motion to compel. Plaintiffs counsel advised the undersigned that they oppose the relief requested due to the Court being divested of jurisdiction by virtue of the Stipulation of Dismissal filed by the parties, and requested that FHFA include their position in this certification.

Finally, pursuant to Local Rule 7.1(d), this motion is accompanied by a Certificate of Emergency.

### CONCLUSION

For the reasons set forth above, FHFA respectfully requests that the Court order Plaintiffs to produce the settlement agreement before the close of business October 28, so FHFA can take account of its contents in its preparation for the October 31 hearing.

Dated: October 25, 2016

Respectfully submitted,

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

  
\_\_\_\_\_  
Samuel J. Dubbin, P.A.  
Florida Bar No. 328189  
DUBBIN & KRAVETZ, LLP  
1200 Anastasia Avenue  
Suite 300  
Coral Gables, Florida 33134  
Telephone: (305) 357-9004  
Facsimile: (305) 371-4701  
sdubbin@dubbinkravetz.com

*Counsel for Federal Housing Finance  
Agency --- Movant to Substitute for Plaintiffs*

**CERTIFICATE OF SERVICE**

The undersigned certifies that, on October 25, 2016, 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 of record. I also served the following counsel of record via e-mail:

<p>Steven W. Thomas  steventhomas@tafattorneys.com  THOMAS, ALEXANDER &amp; FORRESTER  LLP  14 27th Avenue  Venice, CA 90291  Telephone: 310.961.2536  Facsimile: 310.526.6852</p>	<p>Ramon A. Abadin  ramon.abadin@sedgwicklaw.com  Valerie Shea  Valerie.shea@sedgwicklaw.com  SEDGWICK LLP  Two South Biscayne Blvd., Suite 1500  Miami, FL 33131-1822</p>
<p>Hector Lombana  hlombana@glhlawyers.com  GAMBA &amp; LOMBANO, P.A.  2701 Ponce de Leon Boulevard  Mezzanine  Coral Gables, FL 33134  Telephone : 305-448-4010</p>	<p>Andrew C. Baak  John M. Hughes  Bartlit Beck Herman Palenchar &amp; Scott, LLP  1899 Wynkoop Street, Suite 800  Denver, CO 80202  Andrew.baak&amp;bartlit-beck.com  John.hughes@bartlit-beck.com</p>
<p>Gonzalo R. Dorta  grd@glhlawyers.com  GAMBA &amp; LOMBANA, P.A.  2701 Ponce de Leon Boulevard  Mezzanine  Coral Gables, FL 33134  Telephone: 305.448.4010  Facsimile: 305.448.9891</p>	<p>Christoper R. Hagale  Christoper D. Landgraff  Cindy L. Sobel  Jean Katherine Shoemaker Tinkham  Philip S. Beck  Bartlit Beck Herman Palenchar &amp; Scott, LLP  Chicago, IL 60610  Chris.hagale@bartlitbeck.com  Chris.Landgraff@bartlitbeck.com  Cindy.sobel@bartlitbeck.com  Jean.tinkham@bartlitbeck.com  Philip.beck@bartlitbeck.com</p>

<p>Brad F. Barrios Kenneth George Turkel BAJO, CUVA, COHEN &amp; TURKEL, P.A. 100 N. Tampa Street Suite 1900 Tampa, FL 33602 brad.barrios@bajocuva.com kturkel@bajocuva.com Telephone: 813-443-2199 Fax: 813-443-2193</p> <p><i>Counsel for Plaintiffs</i></p>	<p>Raoul G. Cantero, III Michelle Holmes Johnson Jason Nelson Zakia Jesse Luke Green White &amp; Case LLP 200 Southeast Financial Center, Suite 4900 Miami, FL 33131 <a href="mailto:rcantero@whitecase.com">rcantero@whitecase.com</a> <a href="mailto:mhjohnson@whitecase.com">mhjohnson@whitecase.com</a> <a href="mailto:jzakia@whitecase.com">jzakia@whitecase.com</a> <a href="mailto:jgreen@whitecase.com">jgreen@whitecase.com</a></p> <p><i>Counsel for Defendant PricewaterhouseCoopers</i></p>
--	---

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

UNITED STATES DISTRICT COURT  
Southern District of Florida

Case Number: 1:16-cv-21224

ANTHONY R. EDWARDS, et al.,

Plaintiff

v.

PRICEWATERHOUSE COOPERS, LLP,

Defendant

CERTIFICATION OF EMERGENCY

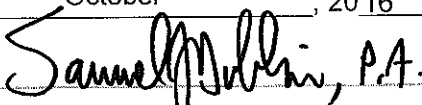
I hereby certify that, as a member of the Bar of this Court, I have carefully examined this matter and it is a true emergency.

I further certify that the necessity for this emergency hearing has not been caused by a lack of due diligence on my part, but has been brought about only by the circumstances of this case. The issues presented by this matter have not been submitted to the Judge assigned to this case or any other Judge or Magistrate Judge of the Southern District of Florida prior hereto.

I further certify that I have made a bona fide effort to resolve this matter without the necessity of emergency action.

Dated this 25th day of October, 2016.

Signature:



Printed Name: Samuel J. Dubbin, P.A.

Florida Bar Number: 328189

Telephone Number: 305 357-9004

=====

**FOR CLERK'S OFFICE USE ONLY**

I hereby certify that the Judge assigned to this case is unavailable for this emergency (a copy of notification to the Clerk is on file). In accordance with Local Rule 3.7, the Honorable \_\_\_\_\_ as randomly drawn from the Emergency Wheel.

I hereby certify that the Judge randomly assigned to this emergency is unavailable due to \_\_\_\_\_. (A copy of notification to the Clerk is on file). In accordance with Local Rule 3.7, the Honorable \_\_\_\_\_ was randomly drawn from the Emergency Wheel.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

**STEVEN M. LARIMORE**  
Court Administrator · Clerk of Court

By: \_\_\_\_\_, Deputy Clerk