

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

Case No.: 1:16-cv-21224-MORENO

ANTHONY R. EDWARDS, *et al.*,

Plaintiffs,

v.

PRICEWATERHOUSE, LLP,

Defendant.

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**PLAINTIFFS' RESPONSE TO THE FEDERAL HOUSING FINANCE
AGENCY'S MOTION TO RECONSIDER, THE COURT'S ORDER
SETTING HEARING ON PENDING MATTERS, AND THE FEDERAL
HOUSING FINANCE AGENCY'S MOTION TO COMPEL
AND INCORPORATED MEMORANDUM OF LAW**

Plaintiffs file this response to the Federal Housing Finance Agency's ("FHFA") Motion to Reconsider the Court's Order Denying all Pending Motions as Moot and Incorporated Memorandum of Law ("Reconsideration Motion") (Doc. 48), the Court's Order Setting Hearing (Doc. 51), and the FHFA's Emergency Motion to Compel Production of Settlement Agreement (Doc. 52).¹

Plaintiffs and Defendant dismissed this action by stipulation on October 18, 2016, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(ii), which provides that "the plaintiff may dismiss an action without a court order by filing ... a stipulation of dismissal signed by all parties who have appeared." FRCP 41(a)(1)(A)(ii). "[T]he plain language of Rule 41(a)(1)(A)(ii) requires that a stipulation filed pursuant to that subsection is self-executing and dismisses the case upon its becoming effective. The stipulation becomes effective upon filing unless it explicitly conditions its effectiveness on a subsequent occurrence. *District courts need not and may not take action after the stipulation becomes effective* because the stipulation dismisses the case and divests the district court of jurisdiction." *Anago Franchising, Inc. v. Shaz, LLC*, 677 F.3d 1272, 1278 (11th Cir. 2012) (emphasis added) (citation omitted); *Genworth Life & Annuity Ins. Co. v. Diane Post Ford*, 2016 U.S. Dist. LEXIS 115740 (S.D. Fla. Aug. 26, 2016) ("This type of dismissal is self-executing and the Court is divested of jurisdiction. *Anago Franchising, Inc. v. Shaz, LLC*, 677 F.3d 1272, 1278 (11th Cir. 2012). It is hereby ORDERED AND ADJUDGED that any pending motions are DENIED AS MOOT and that the Clerk shall CLOSE this case").

¹ Plaintiffs do not consent to or ratify this Court's jurisdiction by filing this Response. Plaintiffs reserve all rights to assert their position that this Court was divested of jurisdiction by virtue of the Stipulation of Dismissal filed by the parties. FHFA's "Emergency" filing after the case has been dismissed places Plaintiffs in the difficult position of responding to FHFA's motion, while maintaining their position that the case is over. Thus, Plaintiffs respond in an abundance of caution with a full reservation of their rights.

The stipulation ended this case and mooted all pending motions “[b]ecause the stipulations of dismissal were effective when filed, there is no action in which to intervene and the motions to intervene are moot.” *Mutual Produce, Inc. v. Penn Cent. Transp. Co.*, 119 F.R.D. 619, 620-621 (D. Mass. 1988); *see also Jou v. Kimberly-Clark Corp.*, 2015 U.S. Dist. LEXIS 97817 (N.D. Cal. 2015) (noting that multiple courts have found that they lack jurisdiction over a dismissed case even if a motion to intervene was pending at the time of the Rule 41(a)(1) dismissal, or relatedly, that the Rule 41(a)(1) dismissal mooted the already-pending intervention motion); *Reagan v. Fox Navigation, LLC*, 2005 U.S. Dist. LEXIS 17268 (D.C. Conn. 2005) (“Courts have ruled that once the parties have filed a Rule 41(a)(1)(ii) stipulation of dismissal, there is no longer a pending case or controversy into which a non-party may intervene”).

Likewise, FHFA’s Emergency Motion to Compel Production of Settlement Agreement is moot because it was filed after the case was dismissed. The Court does not have jurisdiction to consider the motion.

Simply stated, there is no longer any case pending before this Court. *See Smith v. Potter*, 513 F.3d 781, 782-783 (7th Cir. 2008) (“The miscaptioned motion itself effected the dismissal of the suit; the case was gone; no action remained for the district judge to take. Since there was no longer a case pending before him, and since a federal judge's authority to issue orders depends (with immaterial exceptions) on the existence of a case, his order was void.”). As this Court has already correctly ruled, all pending motions were rendered moot by the settlement of this action. The stipulated dismissal filed by the parties then ended this action and divested the Court of jurisdiction to hear any further motions by the FHFA.

For the above reasons, this Court should deny the Reconsideration Motion and Motion to Compel as moot, cancel the hearing scheduled for October 31, 2016, and close this case.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on October 25, 2016, the foregoing document was filed with the Court's CM/ECF system, which will send electronic notice to all counsel of record.

/s/ Brad F. Barrios

Attorney