

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
ALEXANDRIA DIVISION**

**TIMOTHY J. PAGLIARA,**  
**Plaintiff,**

**v.**

**FEDERAL HOME LOAN  
MORTGAGE CORPORATION,**  
**Defendant.**

**No. 1:16-CV-00337 (JCC/JFA)**

**DEFENDANT FREDDIE MAC’S REPLY IN SUPPORT OF MOTION  
TO EXTEND TIME TO ANSWER**

This case is about Plaintiff’s attempt to gain access to the books and records of Freddie Mac for the express purposes of enabling Plaintiff to initiate yet another shareholder lawsuit challenging the Third Amendment to Preferred Stock Purchase Agreements (“PSPAs”) between the FHFA as Conservator of Freddie Mac (and Fannie Mae) and the United States Treasury. Other shareholders already have filed numerous lawsuits arising out of the Third Amendment in various courts across the country. For that reason, FHFA has asked the Judicial Panel on Multidistrict Litigation to consolidate these cases—including this one—for coordinate pretrial proceedings. And Freddie Mac asks this Court (and others) to stay all proceedings in this case while the Panel considers the request to transfer. *See* Notice of Filing With the Judicial Panel on Multidistrict Litigation (filed Mar. 29, 2016) [Dkt. #6]. All three courts that have addressed stay requests in other Third Amendment cases have granted a stay, including in the virtually identical suit filed by Plaintiff Pagliara that seeks to inspect the books and records of Fannie Mae.

Significantly, in the case Pagliara brought in Delaware against Fannie Mae, and in *Saxton*, the courts granted stay motions without even waiting to receive an opposition from Plaintiffs.<sup>1</sup>

The present motion is straightforward and narrow: in the interest of efficiency, should Defendant Freddie Mac be permitted to answer or otherwise respond to the complaint seven days *after* the District Court rules on Defendants' Motion to Stay or, in the Alternative, to Substitute FHFA as Plaintiff (filed Mar. 30, 2016) [Dkt. #10] ("Motion to Stay or Substitute"). In opposition, Plaintiff asks the court to predict how Judge Cacheris will resolve pending motions raising, among other things, fundamental issues of Plaintiff's right to bring the complaint. Freddie Mac's and FHFA's Motion to Stay or Substitute is in the midst of briefing and is scheduled for a hearing on May 5, 2016.<sup>2</sup> At that May 5 hearing, Judge Cacheris will have full briefs and will hear arguments on whether to do as three other federal courts have already done and stay this suit pending the JPML's decision whether to consolidate this suit or, in the alternative, to substitute FHFA for the Plaintiff. Freddie Mac and FHFA will respond to Plaintiff's arguments concerning this separate motion according to the briefing schedule for that motion.

The *only* issue now before the Court is whether to extend the current April 8, 2016 deadline to respond to the Complaint until seven days after Judge Cacheris rules on the Motion to Stay or Substitute. Plaintiff has identified no prejudice he will suffer because of the requested

---

<sup>1</sup> See Order Staying Case Pending a Decision on Transfer to MDL Proceedings, *Pagliara v. Federal Nat'l Mtg. Ass'n*, No. 1:16-cv-193 (D. Del. Filed Apr. 4, 2016); see also Order, *Saxton v. FHFA*, No. 15-CV-LRR (D. Iowa Apr. 4, 2016) [Dkt. #79] (granting motion to stay without awaiting opposition because the "motion appears to be noncontroversial"); Minute Entry, *Jacobs v. FHFA*, No. 1:15-cv-00708 (D. Del. Mar. 28, 2016) ("The Court will stay the case until the MDL Panel rules on the pending motion to transfer").

<sup>2</sup> See Opposition to Motion for Extension of Time to Respond to Complaint (filed Apr. 4, 2016) [Dkt. #16] ("Opp."); see also Motion for Extension of Time to Respond to Complaint (filed Mar. 30, 2016) ["Dkt. #13] ("Motion").

extension of Freddie Mac's response to the Complaint. He concedes that his request to inspect Freddie Mac's records is in preparation for a legal challenge to the Third Amendment, which was executed in August 12, 2012. *See* Motion, at 2. Having waited three and a half years after execution of the Third Amendment to begin pursuing such litigation (and nearly three years after numerous other plaintiffs filed suit challenging the Third Amendment in the summer of 2013), Plaintiff can hardly complain that he will be unduly prejudiced by a month-long extension. Indeed, Plaintiff waited 46 days after receiving FHFA's letter denying his request to inspect Freddie Mac's books and records (January 28, 2016) to institute this litigation (March 14, 2016). Given this chronology, Plaintiff's repeated exhortations about any purported delay, his entitlement to an "expedited hearing," and justice being delayed all ring hollow. The reality is that the claims against Freddie Mac and FHFA that Plaintiff seeks to "investigate" are already being litigated in the several cases that FHFA seeks to consolidate into an MDL proceeding. The question at the heart of Freddie Mac's substitution motion—whether FHFA has succeeded to *all* the claims of shareholders—is also pending before the U.S. Court of Appeals for the D.C. Circuit, where it will be argued on April 15, 2016. *See, e.g., Perry v. Lew*, No. 14-5243 (D.C. Cir. filed Oct. 8, 2014).

The short extension (for approximately one month) that Freddie Mac requests is an unremarkable request that furthers the interests of efficiency and judicial economy, for it ensures that Freddie Mac does not unnecessarily file a motion to dismiss in this Court when the case may

be transferred to another by the JPML.<sup>3</sup> Thus, the extension will enhance efficiency by permitting this Court and the JPML to determine where Freddie Mac should file its motion to dismiss and which court—this one or the proposed transferee court—will resolve the fundamental issues presented in this action, including whether federal law renders FHFA as Conservator the proper Plaintiff in light of its succession to “all rights” of the shareholders. Based on the same efficiency argument made to Judge Cacheris, the District of Delaware agreed to stay the companion case this Plaintiff filed against Fannie Mae before any responsive pleading was due. Accordingly, a brief extension of Freddie Mac’s response deadline is well warranted in these circumstances and should be granted.

---

<sup>3</sup> Plaintiff argues that an extension is unnecessary because Freddie Mac has essentially already filed a motion to dismiss by filing FHFA’s motion to substitute. Plaintiff’s Opposition to Defendant’s Motion to Extend Time to Respond to Complaint, at 2 [Dkt. #16]. That is not accurate. The motion to substitute was not a motion to dismiss, and Freddie Mac reserves the right to move to dismiss on other grounds in addition to those raised by FHFA in its pending motion.

Dated: April 5, 2016

Respectfully submitted,

s/ Taylor T. Lankford

Taylor T. Lankford (Va. Bar. No. 80599)

Michael J. Ciatti (Va. Bar No. 40607)

Graciela M. Rodriguez\*

Merritt E. McAlister\*

KING & SPALDING LLP

1700 Pennsylvania Avenue NW, Ste. 200

Washington, D.C. 20006

Telephone: (202) 737-0500

Facsimile: (202) 626-3737

tlankford@kslaw.com

mciatti@kslaw.com

gmrodriguez@kslaw.com

mmcalister@kslaw.com

*\*Admitted pro hac vice*

*Attorneys for Defendant Federal Home Loan  
Mortgage Corporation*

**CERTIFICATE OF SERVICE**

The undersigned certifies that, on April 5, 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.

s/ Taylor T. Lankford  
Taylor T. Lankford (Va. Bar. No. 80599)  
KING & SPALDING LLP  
1700 Pennsylvania Avenue NW, Ste. 200  
Washington, D.C. 20006  
Telephone: (202) 737-0500  
Facsimile: (202) 626-3737  
tlankford@kslaw.com

*Attorney for Defendant Federal Home Loan Mortgage Corporation*