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VIA ECF

Deborah S. Hunt, Esq.
Clerk of the Court
United States Court of Appeals for the Sixth Circuit
Potter Stewart U.S. Courthouse
100 East Fifth Street
Cincinnati, OH 45202

Re: Robinson v. Federal Housing Finance Agency, No. 16-6680

Dear Ms. Hunt:

Appellant's May 17th submission does not involve a judicial decision, statute, regulation, or any form of authority appropriate for a Rule 28(j) letter. *See, e.g., Kane v. Holder*, 581 F.3d 231, 242 (5th Cir. 2009); *Boston Carrier, Inc. v. I.C.C.*, 746 F.2d 1555, 1563 n.5 (D.C. Cir. 1984).

Moreover, the premise behind Appellant's submission is false. As is apparent from its terms, the Third Amendment did not result in an uncompensated transfer to Treasury, but involved an exchange of consideration, the terms of which Appellant cannot challenge due to Section 4617(f). *See* FHFA Br. 31-33.

In any event, the statement is consistent with FHFA's position. HERA's text is unambiguous. "[T]ime and time again the Act outlines what FHFA as conservator 'may' do and what actions it 'may' take. . . . And 'may' is, of course, 'permissive rather than obligatory.'" *Perry Capital*, 848 F.3d at 1088 (citations omitted). This language of discretion "endows FHFA with extraordinarily broad flexibility to carry out its role as conservator." *Id.* at 1087. Thus, the District Court was correct: HERA "does not create a

ARNOLD & PORTER
KAYE SCHOLER

Deborah S. Hunt, Esq.
May 23, 2017
Page 2

mandatory duty” to preserve and conserve assets. Op., RE 63, PageID#1387; *see also Roberts v. FHFA*, --- F. Supp. 3d ---, 2017 WL 1049841, at *8 (N.D. Ill. Mar. 20, 2017); FHFA Br. 33-37.

In referring to “multiple statutory mandates,” Director Watt described how FHFA must engage in a “balanc[ing]” of various, potentially competing, high-level conservatorship goals and priorities set forth by Congress. *See* Statement at 1. That does not mean Congress required FHFA to take “specific measures” that are “judicially enforceable” at the behest of private plaintiffs in litigation. *Perry Capital*, 848 F.3d at 1088. Nothing in Director Watt’s statement suggests otherwise. Indeed, such an approach would be at odds with the plain language of the statute, including Section 4617(f). *See* FHFA Br. 33-37.

Respectfully Submitted,

/s/ Howard N. Cayne
Howard N. Cayne

*Counsel for Appellants Federal
Housing Finance Agency and Melvin
L. Watt*