

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
CEDAR RAPIDS DIVISION**

THOMAS SAXTON, IDA SAXTON,
BRADLEY PAYNTER,

Plaintiffs,

v.

THE FEDERAL HOUSING FINANCE
AGENCY, in its capacity as Conservator of
the Federal National Mortgage Association
and the Federal Home Loan Mortgage
Corporation, MELVIN L. WATT, in his
official capacity as Director of the Federal
Housing Finance Agency, and THE
DEPARTMENT OF THE TREASURY,

Defendants.

Civil Action No. 1:15-cv-00047

DEFENDANTS' JOINT MOTION TO STAY PROCEEDINGS

Defendants Federal Housing Finance Agency (“FHFA” or the “Conservator”), in its capacity as conservator for the Federal National Mortgage Association (“Fannie Mae”) and the Federal Home Loan Mortgage Association (“Freddie Mac”) (together, the “Enterprises”); Melvin L. Watt; and the United States Department of the Treasury, hereby move the Court for an Order staying the proceedings of this case pending a decision by the Judicial Panel on Multidistrict Litigation on FHFA’s Motion to Transfer this case pursuant to 28 U.S.C. § 1407. The grounds for this Motion are set forth more fully in the Memorandum of Law filed contemporaneously herewith.

Dated: March 31, 2016

Respectfully submitted,

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**DEFENDANTS' MEMORANDUM OF LAW
IN SUPPORT OF THEIR JOINT MOTION TO STAY PROCEEDINGS**

Defendants seek a temporary stay of this action to promote judicial efficiency and avoid duplicative litigation. The requested stay will impose no prejudice on Plaintiffs. It will be of limited duration and for a specific purpose: to permit the Judicial Panel on Multidistrict Litigation (the "Panel") time to rule on a pending motion to transfer this case and several others—all presenting substantially similar claims and issues, including threshold jurisdictional questions, arising out of common facts—for consolidation and coordination in the District Court for the District of Columbia. *In re Fed. Hous. Fin. Agency, et al., Preferred Stock Purchase Agreements Third Amendment Litigation*, MDL No. 2713 (March 15, 2016), ECF No. 1. Indeed, the District of Delaware has already stayed one of the Related Cases pending the

Panel's ruling, without briefing, after conducting a teleconference with the parties to discuss the stay. Order, *Jacobs v. FHFA*, No. 1:15-cv-00708 (D. Del. Mar. 29, 2016).

BACKGROUND

A. The Related Cases

Plaintiffs' complaint mimics fourteen other shareholder complaints filed in four different district courts, including those in three cases recently filed in other district courts (the "Related Cases").¹ All of the actions are brought by shareholders of the Enterprises to challenge the Third Amendment to the PSPAs governing the terms and conditions for Treasury's investment of almost \$200 billion in the Enterprises and continuing commitment to invest an additional \$258 billion as necessary to save the Enterprises from mandatory receivership and liquidation. Plaintiffs' complaint and the Related Cases present identically situated plaintiffs, bringing substantially similar claims for identical relief, arising out of common factual allegations and raising common legal issues, including threshold jurisdictional issues.

The first ten cases were brought in the U.S. District Court for the District of Columbia.² Plaintiffs in those actions asserted claims under the Administrative Procedure Act, 5 U.S.C. § 701, *et seq.*, for rescission of the Third Amendment, as well as assorted state law claims for

¹ The three Related Cases are: *Jacobs v. FHFA*, No. 1:15-cv-00708 (D. Del. filed Aug. 17, 2015); *Robinson v. FHFA*, No. 7:15-cv-00109 (E.D. Ky. filed Oct. 23, 2015); and *Roberts v. FHFA*, No. 1:16-cv-02107 (N.D. Ill. filed Feb. 10, 2016).

² The cases filed in the District Court for the District of Columbia are: *Perry Capital LLC v. Lew*, 70 F. Supp. 3d 208 (filed July 7, 2013); *Fairholme Funds, Inc. v. FHFA*, No. 13-cv-01053 (filed July 10, 2013); *Arrowood Indemnity Co. v. Fed. Nat'l Mortg. Ass'n*, No. 13-cv-01439 (filed Sept. 20, 2013); *Liao v. Lew*, No. 13-cv-01094 (filed July 16, 2013); *Cacciapelle v. Fed. Nat'l Mortg. Ass'n*, No.13-cv-01149 (filed July 29, 2013); *Am.-European Ins. Co. v. Fed. Nat'l Mortg. Ass'n*, No.13-cv-01169 (filed July 30, 2013); *Cane v. FHFA*, No. 13-cv-01184 (filed Aug. 1, 2013 in D.D.C.); *Dennis v. United States*, No. 13-cv-01208 (filed Aug. 5, 2013); *Marneu Holdings, Co. v. FHFA*, No. 13-cv-01421 (filed Sept. 18, 2013); and *Borodkin v. Fed. Nat'l Mortg. Ass'n*, No. 13-cv-01443 (filed Sept. 20, 2013). On November 18, 2013, the *Liao*, *Cacciapelle*, *Am.-European Ins. Co.*, *Cane*, *Dennis*, *Marneu Holdings*, and *Borodkin* actions were consolidated as *In re Senior Preferred Stock Purchase*, No.13-mc-1288, in the District Court for the District of Columbia.

money damages. The District Court for the District of Columbia granted Defendants' motions to dismiss with respect to all ten complaints. *Perry Capital LLC v. Lew*, 70 F. Supp. 3d 208, 246 (D.D.C. 2014). That decision is currently on appeal to the U.S. Court of Appeals for the District of Columbia. Briefing is complete and oral arguments are scheduled for April 15, 2016.

Soon after the decision in *Perry Capital*, an Enterprise shareholder brought an eleventh action presenting the same claims in the U.S. District Court for the Southern District of Iowa. The court dismissed that case on issue preclusion grounds. *Cont'l W. Ins. Co. v. FHFA*, 83 F. Supp. 3d 828, 840 (S.D. Iowa 2015). In the alternative, the court noted its agreement with the holding in *Perry Capital* that FHFA's and Treasury's actions "were permissible under the authority granted by HERA." *Id.* at 840 n. 6. Plaintiff did not appeal.

This action, along with the three other Related Cases, asserts substantially similar claims to those that the courts dismissed in *Perry Capital* and *Continental Western Insurance Company*. All four Related Cases seek substantially identical declaratory and injunctive relief that would vacate the Third Amendment. *Saxton* Am. Compl. Prayer for Relief (a); *Robinson* Am. Compl. Prayer for Relief (a); *Roberts* Compl. Prayer for Relief (a); *Jacobs* Compl. Prayer for Relief (D).

In addition, there are four other actions that raise the same factual and legal issues relating to the Third Amendment, shareholder standing, and the conservatorships. *Edwards v. Deloitte & Touche, LLP*, No. 2016-004986-CA-01 (Fla. Cir. Ct. filed Feb. 29, 2016); *Edwards v. PricewaterhouseCoopers, LLP*, No. 2016-005875-CA-01 (Fla. Cir. Ct. filed Mar. 9, 2016); *Pagliara v. Fed. Nat'l Mortg. Ass'n*, No. 1:16-cv-00193 (D. Del. filed Mar. 25, 2016); and *Pagliara v. Fed. Home Loan Mortg. Corp.*, No. 1:16-cv-00337 (E.D. Va. filed Mar. 25, 2016).

B. FHFA's Motion to Transfer Pursuant to 28 U.S.C. § 1407

On March 15, 2016, FHFA filed a motion with the Panel to transfer the Related Cases to the U.S. District Court for the District of Columbia for consolidated or coordinated pretrial

proceedings. On March 16, 2016, FHFA filed a notice of the filing in this Court and attached the moving papers to the notice. ECF No. 75. On March 21, 2016, the Department of the Treasury filed with the Panel its response in support of FHFA's motion to transfer. Responses to FHFA's Motion to Transfer are due on April 6, 2016, and FHFA may file a reply by April 13, 2016.

Defendants are moving to stay all of the Related Cases pending a decision by the Panel on the motion to transfer. The District of Delaware has already entered a stay in the *Jacobs* Related Case after conducting a teleconference with the parties, even though briefing on defendants' motions to dismiss in *Jacobs* was complete. See Order, *Jacobs v. FHFA*, No. 1:15-cv-00708 (D. Del. Mar. 29, 2016) (“[T]his action is stayed until the Panel rules on the MDL Motion.”).

Pending before this Court are Defendants' Motions to Dismiss Plaintiffs' Amended Complaint for lack of subject matter jurisdiction. ECF Nos. 76-77.

ARGUMENT

Defendants respectfully request this Court stay all proceedings in this suit pending the Panel's decision on whether to transfer this case for coordination or consolidation with other related cases for pretrial proceedings. Granting a stay is well within the Court's “inherent power to stay proceedings and ‘to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants.’” *Stone v. INS*, 514 U.S. 386, 411 (1995) (quoting *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936)). As the Panel has explained, the goal of a multidistrict litigation (“MDL”) proceeding is to “eliminate duplicative discovery, prevent inconsistent or repetitive pretrial rulings . . . and conserve the resources of the parties, their counsel, and the judiciary.” *In re Diet Drugs (Phentermine/Fenfluramine/Dexfenfluramine) Prods. Liab. Litig.*, 990 F. Supp. 834, 836 (J.P.M.L. 1997). To safeguard these benefits of

coordinated pretrial proceedings, courts within the Eighth Circuit have granted motions to stay proceedings pending the Panel’s decision on whether to transfer.³

When deciding a motion to stay, this Court generally considers three factors: “(1) whether a stay would unduly prejudice or present a clear tactical disadvantage to the non-moving party; (2) whether a stay will simplify the issues in question and trial of the case; and (3) whether discovery is complete and whether a trial date has been set.” *Dordt Coll. v. Burwell*, No. C 13-4100-MWB, 2014 WL 5454649, at *1 (N.D. Iowa Oct. 27, 2014). These factors favor staying this action pending the Panel’s decision on FHFA’s Motion to Transfer.

A. Staying this Action Will Not Cause Plaintiffs Undue Prejudice and Does Not Give Defendants a Clear Tactical Advantage

A stay would not cause Plaintiffs undue prejudice. First, the stay in this action will likely be brief: responses to FHFA’s motion before the Panel are due April 6, 2016, FHFA may reply by April 13, 2016, and the Panel generally renders its decision “in relatively short order.” *See Paul v. Aviva Life & Annuity Co.*, No. 09-1038, 2009 WL 2244766, at *1 (N.D. Ill. July 27, 2009). Second, the only pending motions before the Court are Defendants’ Motions to Dismiss, which were recently filed (on March 18, 2016) and are not fully briefed. In addition, if transfer is granted, Plaintiffs will have a full opportunity to present their arguments to the transferee court. *Munchel*, 2012 WL 4050072, at *5. Moreover, even if there were any prejudice to Plaintiffs—and there is not—it would be greatly outweighed by the benefits of a stay,

³ *See, e.g., S.M. ex rel. Wilson v. Janssen Pharmaceutical, L.P.*, No. 4:06CV00260 AGF, 2006 WL 950212, at *1 (E.D. Mo. Apr. 6, 2006); *Adams v. Tyson Foods, Inc.*, No. 07-CV-4019, 2007 WL 1539325, at *1 (W.D. Ark. May 25, 2007); *see also Munchel v. Wyeth LLC*, No. 12-906-LPS, 2012 WL 4050072, at *2 (D. Del. Sept. 1, 2012) (staying newly removed suit pending decision on MDL consolidation); *Ohio v. U.S. Env. Prot. Agency*, No. 2:15-cv-2467, 2016 WL 525480, at *2 (S.D. Ohio Feb. 8, 2016) (granting stay pending decision on MDL consolidation); *Bearup v. Pfizer, Inc.*, Case No. 15cv13995, 2015 WL 9266908 (E.D. Mich. Dec. 16, 2015) (same); *Bd. of Tr. of Teachers’ Ret. Sys. of State of Ill. v. Worldcom, Inc.*, 244 F.Supp.2d 900, 905 (N.D. Ill. 2002) (same).

including to promote judicial economy, avoid the risk of inconsistent rulings on jurisdictional issues, and minimize prejudice to Defendants.

Staying this action does not give Defendants a clear tactical advantage. To the contrary, denying the motion to stay would be harmful and inequitable to Defendants. Currently, Defendants must defend substantially similar actions in four jurisdictions. That number is likely to grow, as additional shareholder actions challenging the Third Amendment are all but inevitable.⁴ Without a stay, Defendants would suffer “considerable hardship and inequity if forced to simultaneously litigate multiple suits in multiple courts,” and it may “potentially suffer conflicting rulings by different judges in these multiple suits.” *See Aikins v. Microsoft Corp.*, No. CIV.A.00-0242, 2000 WL 310391, at *1 (E.D. La. Mar. 24, 2000).

The threat of inconsistent rulings is particularly acute here, as the substantially similar cases all seek the same relief—vacating the Third Amendment—and share questions of fact and law arising under a comprehensive statutory scheme. *See In re Dep’t of Energy Stripper Well Exemption Litig.*, 472 F. Supp. 1282, 1285 (J.P.M.L. 1979) (transferring cases “in order to . . . eliminate the possibility of conflicting pretrial rulings” where the litigation shared “questions of fact and law arising under a complicated series of statutes”). This Court would have to rule on the same issues to resolve materially identical motions to dismiss in the Related Cases. These issues include the statutory bar on court actions and the scope of shareholder rights while the Enterprises’ are in conservatorship (12 U.S.C. §§ 4617(b)(2)(A), (f)). Thus, duplicative litigation and the risk of inconsistent decisions on those issues prejudice Defendants and weigh

⁴ Indeed, two actions against the Enterprises’ auditors are currently pending in Florida state court (*Edwards*, No. 2016-004986-CA-01; *Edwards*, No. 2016-005875-CA-01). And an Enterprise shareholder has filed suit for access to the Enterprises’ books and records (*Pagliara*, No. 1:16-cv-00193; *Pagliara*, No. 1:16-cv-00337), as to which FHFA filed a notice of related actions with the Panel.

in favor of a stay. *See Paul*, 2009 WL 2244766, at *2 (holding the possibility of “conflicting decisions on similar pre-trial issues” weighed in favor of a stay). In these circumstances, staying the action to allow the Panel to decide the transfer motion would not unduly prejudice Plaintiffs.

B. Staying this Action Will Potentially Eliminate the Pretrial Issues Before this Court

The Court should grant a motion to stay when it “will simplify (or eliminate) the pretrial issues before this Court” *See Munchel*, 2012 WL 4050072, at *5 (applying the same factors and granting a motion to stay pending the Panel’s decision to transfer). This action as well as the Related Cases present threshold jurisdictional issues. Staying this action will allow a potential transferee court to decide Defendants’ Motions to Dismiss and eliminate this pretrial issue before the Court. Indeed, “it was the intent of Congress to grant to the transferee district court under § 1407 the power to pass upon all pretrial motions, including motions to dismiss” *Kaiser Indus. Corp. v. Wheeling-Pittsburgh Steel Corp.*, 328 F. Supp. 365, 371 (D. Del. 1971) (citation omitted).

Ruling on Defendants’ motions requires each Court to interpret a comprehensive federal statutory scheme concerning the nation’s secondary market in residential mortgages; each court must also examine HERA and judicial interpretations of materially identical provisions in the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (“FIRREA”), Pub. L. 101-73, 103 Stat. 183.⁵ Where multiple courts face the same jurisdictional issues, and a motion to transfer is before the Panel, the “best course” is to stay the action and, if transfer is granted, allow the transferee court to “resolve the jurisdictional question[s].” *See Johnson v. AMR Corp.*, Nos. 95 C 7659 to 95 C 7664, 1996 WL 164415, at *3 (N.D. Ill. Apr. 3, 1996); *see also Emerson*

⁵ *See Perry Capital*, 70 F. Supp. 3d at 220 (noting the courts’ reliance on judicial interpretation of provisions of FIRREA that are “nearly identical” to provisions in HERA because “case law adjudicating HERA-related disputes is generally sparse”).

v. Lincoln Elec. Holdings, Inc., No. 09-6004-CV-SJ-GAF, 2009 WL 690181, at *1 (W.D. Mo. Mar. 12, 2009) (“A stay of proceedings is routine where jurisdictional challenges are pending.”). Even if the Panel does not grant the transfer, there is no prejudice against Plaintiffs in granting a short stay before briefing is completed on Defendants’ Motions to Dismiss—any such prejudice would be against Defendants. Because the jurisdictional issues in this case and the Related Cases have broad implications beyond each respective case, and the same jurisdictional issues will be before the transferee court in the other similar cases, a single court should decide the motions to dismiss. *Dordt Coll.*, 2014 WL 5454649, at *1 (recognizing a stay in proceedings is warranted when another court would address the same issues that “will likely ‘simplify,’ if not resolve,” the issues before it).

As such, this factor weighs heavily toward granting a stay pending the Panel’s decision to transfer.

C. A Stay is Appropriate Because Discovery Is Not Complete and a Trial Date Is Not Set

This action is in the early stages of litigation because no scheduling order has been issued, discovery has not begun, and a trial date is not set. *Pragmatus Telecom, LLC v. Advanced Store Co.*, No. CIV.A. 12-088-RGA, 2012 WL 2803695, at *2 (D. Del. July 10, 2012) (granting a motion to stay because “[t]he motion was filed before any trial date had been set and any discovery had been scheduled”); *Ever Win Int’l Corp. v. Radioshack Corp.*, 902 F. Supp. 2d 503, 507 (D. Del. 2012) (granting a motion to stay where no scheduling order was in place). Although the original Complaint was filed on May 28, 2015, Plaintiffs filed an Amended Complaint on February 9, 2016, and briefing on Defendants’ Motions to Dismiss is not complete. As such, a stay will prevent the parties from expending resources to complete briefing in this matter in addition to briefing FHFA’s motion before the Panel.

Moreover, a stay of the action will also promote judicial economy. The Court need not expend resources to familiarize itself “with the intricacies of a case that may be coordinated or consoli[dated] for pretrial purposes in another court.” *See Paul*, 2009 WL 2244766, at *1. A stay would ensure that the court does not expend “judicial resources by addressing various pre-trial motions that could have been resolved in the transferee court.” *See id.*

CONCLUSION

For the foregoing reasons, the Court should stay this action until 14 days after the Panel rules on FHFA’s pending motion to transfer.

Dated: March 31, 2016

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CERTIFICATE OF SERVICE

The undersigned certifies that 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.

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