

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

MICHAEL ROP, *et al.*,

Plaintiffs,

v.

THE FEDERAL HOUSING FINANCE
AGENCY, *et al.*,

Defendants.

Case No. 1:17-cv-00497

**FHFA DEFENDANTS' NOTICE OF SUBSTITUTION
AND SUPPLEMENTAL MEMORANDUM**

Pursuant to Rule 25(d) of the Federal Rules of Civil Procedure, the FHFA Defendants provide notice that Joseph M. Otting has been designated Acting Director of the Federal Housing Finance Agency, effective January 7, 2019. We respectfully request that the caption be updated to substitute Mr. Otting for Defendant Melvin L. Watt.

The FHFA Defendants further advise that, under new leadership, FHFA has reconsidered certain issues relating to Count I of Plaintiffs' Complaint. It remains FHFA's position that it is unnecessary for this Court to reach the constitutionality of the Housing and Economic Recovery Act's ("HERA") for-cause removal provision in order to dismiss Count I. To the extent the Court concludes it is necessary to reach the constitutional issue, FHFA will no longer defend the constitutionality of HERA's for-cause removal provision. The FHFA Defendants accordingly withdraw the arguments that HERA's for-cause removal provision is constitutional set forth in their briefs in support of their motion to dismiss and in opposition to Plaintiffs' motion for

summary judgment and various notices of supplemental authority.¹ The FHFA Defendants continue to urge dismissal of Counts II, III, IV, and V on all grounds previously advanced, and dismissal of Count I on all grounds other than those specifically withdrawn herein.

Dated: January 18, 2019

Respectfully submitted,

/s/ D. Andrew Portinga
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¹ See Brief of FHFA Defendants in Support of Motion to Dismiss at 11-16, ECF No. 25, PageID.404-409; Brief of FHFA Defendants in Opposition to Plaintiffs' Motion for Summary Judgment and in Reply Supporting FHFA Defendants' Motion to Dismiss at 9-12, ECF No. 36, PageID.960-963; Notice of Supplemental Authority, ECF No. 40, PageID.1077; Response to Plaintiffs' Notice of Supplemental Authority Concerning *Collins v. Mnuchin* at 1, ECF No. 49, PageID.1498; Notice of Supplemental Authority at 1, ECF No. 50, PageID.1502.