

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

FEDERAL HOUSING FINANCE AGENCY

Plaintiff,

vs.

Case No.: 1:16-cv-21221-RNS

DELOITTE & TOUCHE, LLP,

Defendant,

MASTER SGT. ANTHONY R EDWARDS;  
DOREEN BIERYLA; ED BIERYLA; DON  
R. CAMERON, III; MICHAEL CARMODY;  
AMIT CHOKSI; JOSEPH K. DUGHMAN;  
JAMES FERGUSON; GATOR CAPITAL  
MANAGEMENT, LLC; ALLEN HARDEN;  
MATT HILL; JAY HUBER; JIM  
HUMPHRIES; GORDON INMAN; SHAUN  
INMAN; KEVIN JARVIS; CATHERINE M.  
JENNINGS; RICH KIVELA; CONSTANCE  
LAMEIER; JEFFREY LANGBERG; JEAN  
MAC BALL; JAMES MILLER; PHIL  
MILLER; SYLVIA MILLER; WILLIAM  
MILTON, JR.; MARYAM MOINFAR; RAY  
B. O'STEEN; WAYNE OLSEN; DR.  
MICHAEL PASTERNAK; PERINI  
CAPITAL LLC; CARL R. ROBERTS;  
JERRY W. SHARBER; LOUISE STRANG;  
MELODY SULLIVAN; JOSEPH WASKE;  
JOHNNA B. WATSON; RANDY WEBB;  
BARRY WEST; JAY WINER; and JORGE  
ZAPATA,

Original Plaintiffs.

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**ORIGINAL PLAINTIFFS' MOTION FOR AN ORDER DIRECTING THE CLERK TO  
ENTER JUDGMENT UNDER FED. R. CIV. P. 58  
AND SUPPORTING MEMORANDUM OF LAW.**

The Original Plaintiffs, Anthony R. Edwards, et al., move this Court for an order directing the Clerk of Court to enter judgment in a separate document pursuant to Federal Rule of Civil

Procedure 58. The substituted Plaintiff, the Federal Housing Finance Agency (FHFA), and the Defendant, at this time, cannot consent to this motion.

Federal Rule of Civil Procedure 58(a) requires that every judgment, except in circumstances not applicable here, “be set out in a separate document.” The entry of a judgment – and the precise date on which a judgment is considered “entered” – is of the utmost importance because it marks when the time begins to run for the filing of a notice of appeal. *See* 11 Charles Alan Wright et al., *Federal Practice and Procedure* § 2781, n.7 (3d ed. 2017) (citing several cases, including *Fogade v. ENB Revocable Trust*, 263 F.3d 1274 (11th Cir. 2001)). Further, Rule 58 directs the Clerk of Court, without the Court’s direction, to “promptly prepare, sign, and enter the judgment when ... the court denies all relief.” Fed. R. Civ. P. 58(b)(1)(C).

In an order entered on February 10, 2017, this Court denied all relief. Specifically, it granted the substituted Plaintiff’s motion for a voluntary dismissal and directed the clerk to close the case. (Doc. 56.) The Court cited Rule 23.1(c) or 41(a)(1)(i) as the basis for its order. (Doc. 58.) Neither of those rules is a basis for one of the limited exceptions to Rule 58(a)’s general requirement that a judgment must be set out in a separate document. The Court, however, did not direct the clerk to enter a separate judgment. Nor has the clerk entered a separate judgment, notwithstanding Rule 58(b)(1)(C)’s clear direction that the Clerk must enter a separate judgment where, as here, all relief has been denied. Accordingly, this Court’s judgment is not yet considered “entered.”<sup>1</sup> If this Court and the clerk fail to enter a separate judgment, then its judgment will be

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<sup>1</sup> The Original Plaintiffs acknowledge they previously filed a motion to alter or amend judgment under Federal Rule of Civil Procedure 59(e). (Doc. 57.) That motion was done in the extreme abundance of caution in the event any of this Court’s prior orders could have been considered the entry of a judgment. The filing of that motion, however, does not alter the mandatory requirement to enter a separate judgment under Rule 58(a) to accompany the order granting the substituted Plaintiff’s motion for voluntarily dismissal. Rule 58(a)(4) merely makes unnecessary a separate document to accompany any order denying a Rule 59(e) motion.

considered “entered” on July 10, 2017, which is 150 days after the entry of the order granting the substituted Plaintiff’s motion for voluntary dismissal. *See* Fed. R. Civ. P. 58(c)(2)(B); Fed. R. App. P. 4(a)(7)(A)(ii); *Lane v. 1199 SEIU Healthcare Workers Labor Union*, Case No. 16-3566-CV, 2017 WL 2197828, at \*1 n.1 (2d Cir. May 18, 2017) (unpublished) (holding that, because the district court failed to enter a separate judgment, the judgment was deemed entered 150 days after the plaintiffs voluntarily dismissed her remaining claims).

The Original Plaintiffs desire to appeal this Court’s judgment, and the non-final orders preceding the judgment. Among other things, the Original Plaintiffs may challenge on appeal the Court’s decision to substitute the FHFA as the plaintiff in this case and this Court’s decision to not remand this action to state court. However, at this point in time, any appeal by the Original Plaintiffs would be deemed premature because, as explained immediately above, no judgment has been entered yet.<sup>2</sup>

Rule 58 authorizes a party to “request that judgment be set out in a separate document as required by Rule 58(a).” Fed. R. Civ. P. 58(d). That is precisely what the Original Plaintiffs request with this motion. The entry of a separate judgment is plainly required by Rule 58(a). The entry of the separate judgment will provide a clear mark as to the beginning of the 60-day period under Rule 4(a)(1)(B) to file a notice of appeal. *See* 11 Wright et al., *supra* § 2781 (discussing that Rule

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<sup>2</sup> The FHFA is a “United States agency.” (*See* Doc. 15, at 7 (describing the FHFA as an “independent federal agency” established by Congress)). Accordingly, the time for filing a notice of appeal is governed by Rule 4(a)(1)(B) of the Federal Rules of Appellate Procedure. *See* Fed. R. App. P. 4(a)(1)(B)(ii). That rule directs that “[t]he notice of appeal may be filed . . . within 60 days after entry of the judgment or order appealed from.” *Id.* (emphasis added). Because no separate document has been entered and because 150 days has not lapsed, no appealable judgment or order has yet been entered. *See* Fed. R. App. P. 4(a)(7)(A)(ii). Thus, the Original Plaintiffs’ 60-day period for filing a notice of appeal under Rule 4(a)(1)(B) has not yet begun to run.

58's purpose is to answer precisely when a judgment has been entered and precisely the time on which a notice of appeal begins to run).

**Conclusion**

For the reasons stated herein, the Original Plaintiffs respectfully request that this Court direct the Clerk of Court to enter a judgment dismissing the case pursuant to the request of the substituted Plaintiff.

**Certificate of Compliance with L.R. 7.1(a)(3)**

The undersigned Original Plaintiffs' counsel certifies that he has conferred with the substituted Plaintiff's and Defendant's counsel in a good-faith effort to resolve the issue raised in this motion. A copy of this motion was sent to counsel at approximately 7:09 p.m., Friday, May 26, 2017. Plaintiff's and Defendant's counsel reported, shortly before 4:00 p.m. on Tuesday, May 30, 2017 (the day after Memorial Day), that they were still "assessing" or "evaluating" the motion and were unable to presently consent to the motion. The undersigned counsel believes that it is in his clients' best interest to file this motion promptly and without further delay, and thus is doing so even though opposing counsel is still assessing and evaluating their clients' positions.

Respectfully Submitted,

CREED & GOWDY, P.A.

*/s/ Bryan S. Gowdy*

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**CERTIFICATE OF SERVICE**

I certify that on this 30th day of May, 2017, the foregoing document was filed electronically using the Court's CM/ECF system, and notice of this filing will be sent by e-mail to the following parties by operation of that electronic filing system:

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