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August 25, 2016

VIA ELECTRONIC FILING

Mr. Mark Langer

Clerk of the Court

United States Court of Appeals for the District of Columbia Circuit

E. Barrett Prettyman United States Courthouse

333 Constitution Avenue, N.W.

Washington, D.C. 20001

Re: *Perry Capital LLC v. Lew*, Nos. 14-5243 (L), 14-5254 (con.), 14-5260, 14-5262 (con.)

Dear Mr. Langer:

Whether HERA permits shareholders to inspect the Companies' books and records during conservatorship presents "a completely different question" from whether shareholders retain the right to sue for direct injuries inflicted by FHFA. *Pagliara v. Federal Home Loan Mortg. Corp.*, slip op. at 19, No. 16-337 (E.D. Va. Aug. 23, 2016) ("Op."). Because Plaintiffs do not seek to inspect the Companies' books and records, elect the Companies' directors, compel the Companies to hold annual meetings, or exercise any other corporate governance right, the decision in *Pagliara* is inapposite. *See id.* at 19–20. Even if HERA deprives shareholders of their right to inspect the Companies' books and records, this "does not affect" their "right to bring a direct lawsuit." *Id.* at 24 n.16.

Far from endorsing FHFA's position that Plaintiffs' injuries may only be redressed if FHFA *sues itself*, *Pagliara* accepted the many judicial opinions that hold that during conservatorship shareholders retain the right "to bring a lawsuit to remedy [their] own direct injuries." *Id.* at 19. That is because the only shareholder rights that HERA transfers to FHFA as conservator are those "with respect to the regulated entity and the assets of the regulated entity," 12 U.S.C.

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§ 4617(b)(2)(A)(i), and “standing to bring a lawsuit to remedy a personal injury is not easily categorized as a right with respect to the corporation,” Op. 19; *see* Final Reply Br. for Class Plaintiffs 3–6 (Mar. 8, 2016) (“Class Plaintiffs’ Reply”).

While *Pagliara* erred in rejecting a conflict-of-interest exception for *derivative* claims during conservatorship, Op. 29 n.20, *see* Class Plaintiffs’ Reply 7–10, Institutional Plaintiffs’ claims are uniformly direct.

Pagliara’s suggestion that during conservatorship HERA suspends many of the usual corporate governance mechanisms shareholders possess for ensuring management’s loyalty and care underscores why FHFA must be required to scrupulously comply with its statutory and fiduciary duties. HERA requires the conservator to preserve and conserve the Companies’ assets with the goal of returning them to soundness and solvency. Where, as here, the conservator willfully and openly abandons that statutory mission, injunctive relief is appropriate.

/s/ Charles J. Cooper

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