IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

ANTHONY R. EDWARDS, *et al.*,

Plaintiffs,

v.

PRICEWATERHOUSE COOPERS, LLP,

Defendant.

No. 1:16-cv-21224

FHFA'S MOTION TO RECONSIDER DENIAL OF MOTION TO SUBSTITUTE AND SUPPORTING MEMORANDUM OF LAW

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October 17, 2016

Counsel for Federal Housing Finance Agency --- Movant to Substitute for Plaintiffs

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The Federal Housing Finance Agency ("FHFA") respectfully moves the Court to reconsider its Order denying as moot FHFA's motion to replace the current Plaintiffs in this lawsuit. [1] The agreement between current Plaintiffs and Defendant PricewaterhouseCoopers, LLP ("PwC") to settle this action[2] —far from mooting FHFA's succession motion—makes it critical for the Court first to address whether Plaintiffs can settle this matter as they do not have the rights asserted. Congress transferred to FHFA exclusively the right to control this suit. The Court should reconsider and should grant FHFA's motion to substitute.

FHFA does not seek reconsideration in order to delay or obstruct resolution of the lawsuit. To the contrary, FHFA reiterates that if it is substituted for Plaintiffs, it will promptly dismiss this suit without payment of any kind.[3] FHFA brings this motion because 12 USC § 4617(b)(2)(A) assigned ***all*** shareholder rights exclusively to FHFA during Freddie Mac's conservatorship. Allowing the current Plaintiffs to settle a shareholder claim would be inconsistent with Congress's clear intent that FHFA, and FHFA alone, should control shareholder litigation involving Freddie Mac.

BACKGROUND

In September, 2008, FHFA placed Freddie Mac into a conservatorship that continues today. *See* Comp. ¶ 21. As Conservator, FHFA is statutorily empowered to "take over the assets of and operate" Freddie Mac and Fannie Mae, to "perform all [their] functions" and "conduct

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1 *See* FHFA's Renewed Mot. to Subst. as Plaintiff and Supporting Memo. of Law (filed Aug. 17, 2016) [D.I. 33] ("Mot. to Subst.").

2 *See* Notice of Court Practice Upon Parties' Notice of Settlement (filed Oct. 12, 2016) [D.I. 47].

3 *See* FHFA's Opp. to Pltfs' Mot. to Remand, at 3 (filed Sept. 14, 2016) [D.I. 38] (FHFA's motion to substitute "is dispositive as upon substitution as plaintiff, FHFA will dismiss this lawsuit").

[their] business," to "preserve and conserve [their] assets and property," and to "put [them] in a sound and solvent condition." 12 U.S.C. §§ 4617(b)(2)(B), (D). Further, under HERA's jurisdiction-withdrawal provision, "no court may take any action to restrain or affect" the Conservator's "exercise of [its] powers or functions" under the statute. *Id.* § 4617(f). HERA also expressly bars any other agency or State from "direct[ing] or supervis[ing]" the Conservator's "exercise of [its] rights, powers, and privileges." *Id.* § 4617(a)(7). In short, HERA gives FHFA as Conservator the broadest possible grant of rights, titles, powers, and privileges to operate the Enterprises. *Pagliara v. Fed. Home Loan Mortg. Corp.*, No. 116CV337JCCJFA, 2016 WL 4441978, at *10 (E.D. Va. Aug. 23, 2016) (HERA gave an "extraordinarily broad grant of operational discretion to FHFA.").

Plaintiffs—individual and institutional shareholders of Freddie Mac—filed this suit in Florida state court on March 9, 2016, asserting two claims on behalf of each Plaintiff against PwC: (a) negligent misrepresentation; and (2) aiding and abetting alleged breaches of fiduciary duty purportedly owed Freddie Mac's shareholders by FHFA, the Department of the Treasury, and Freddie Mac's officers and directors. *See, e.g.*, Compl. ¶¶ 98-116. On April 6, 2016, PwC removed the suit to this Court on the basis of federal question jurisdiction. *See* Notice of Removal [D.I. 1].

To date, the case has focused on two motions. *First*, FHFA moved to substitute itself as the only proper plaintiff for this lawsuit because Plaintiffs assert *shareholder* claims and HERA, 12 U.S.C. § 4617(b)(2)(A), transferred to FHFA during its conservatorship "all rights, titles, powers, and privileges" of Freddie Mac, "*and of any stockholder*" of that company. (emphasis added). *See* Mot. to Subst., at 1-17. *Second,* Plaintiffs moved on August 15, 2016, to remand the

suit to Florida state court. *See* Plaintiffs' Mot. for Remand [D.I. 28]. Both these motions were fully briefed and ready for the Court's consideration.

On October 11, 2016, Plaintiffs and PwC notified the Court that they had agreed to settle. They provided FHFA with no details concerning the proposed settlement, but the Court ordered them to submit "all papers related to the settlement including any order of dismissal stating specific terms and conditions" by October 18, 2016.[4] On October 13, 2016, the Court denied FHFA's pending motion to substitute and Plaintiffs' pending motion to remand as moot in light of the proposed settlement with no further briefing by FHFA. *See* Order Denying All Pending Motions as Moot [D.I. 48].

ARGUMENT

The "purpose of a motion for reconsideration is to correct manifest errors of law or fact. . ." *In re Managed Care Litigation*, MDL No. 1334, 2002 WL 1359734, at *1 (S.D. Fla. June 11, 2002). Reconsideration "of a previous order is an extraordinary remedy to be employed sparingly in the interests of finality and conservation of scarce judicial resources." *Waite v. All Acquisition Corp.*, _ F.3d __, 2016 WL 4257516, at *4 (S.D. Fla. July 11, 2016). Acknowledging this substantial burden, FHFA respectfully submits that the Court's Order denying FHFA's motion to substitute as moot—entered without notice to FHFA—presents exactly the extraordinary circumstances that justify reconsideration.

Federal law makes clear that Plaintiffs do not have authority and standing to settle this lawsuit. Plaintiffs concede that their suit asserts claims as *shareholders* of Freddie Mac. *See, e.g.*, Compl. ¶ 11. On September 6, 2008, when FHFA placed Freddie Mac in conservatorship, § 4617(b)(2)(A) and transferred "***all*** rights, titles, powers, and privileges of [Freddie Mac], and

[4] *See supra* note 2.

of any ***stockholder***, officer, or director of such regulated entity with respect to the regulated entity and the assets of the regulated entity" to FHFA (emphasis added). "As many courts have recognized, the language 'all rights, titles, powers, and privileges . . . of any stockholder' is *extremely broad* and evidences Congress's intent 'to shift as much as possible to the FHFA.'" *Pagliara*, 2016 WL 4441978, at *5 (emphasis added) (quoting *In re Fed. Nat'l Mortg. Assoc.*, 629 F. Supp. 2d 1, 3 (D.D.C. 2009)). Congress "transferred everything it could to the [conservator], and that includes a stockholder's right, power, or privilege . . . to sue directors or others when action is not forthcoming." *Kellmer v. Raines*, 674 F. 3d 848, 851 (D.C. Cir. 2012). "In other words, the language means what it plainly says; HERA transferred 'all rights previously held by Freddie Mac's shareholders'" to the Conservator. *Pagliara*, 2016 WL 4441978, at *5 (quoting *In re Fed. Home Loan Mortg. Corp.*, 643 F. Supp. 2d 790, 795 (E.D. Va. 2009)).

Because § 4617(b)(2)(A) transferred all of Plaintiffs' shareholder rights to FHFA, Plaintiffs have no authority to take ***any*** action with respect to this suit, including settling it. *See* 12 U.S.C. §§ 4617(b)(2)(B), (D) (empowering FHFA to "take over the assets of and operate" Freddie Mac and Fannie Mae, to "perform all [their] functions" and "conduct [their] business," to "preserve and conserve [their] assets and property," and to "put [them] in a sound and solvent condition."

CONCLUSION

FHFA respectfully urges that the Court reconsider its October 13, 2016 Order denying FHFA's motion to substitute and instead grant that motion, confirming that Congress assigned to FHFA sole discretion to control this suit. Promptly after the Court grants FHFA's motion to substitute, FHFA will dismiss the lawsuit with prejudice.

Dated: October 17, 2016

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies that, on October 17, 2016, a true and correct copy of the foregoing was filed electronically using the Court's CM/ECF system. I also served the following counsel of record via e-mail:

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