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

ANTHONY R. EDWARDS, *et al.*,

Plaintiffs,

v.

PRICEWATERHOUSECOOPERS, LLP,

Defendant.

No. 1:16-cv-21224

THE FEDERAL HOUSING FINANCE AGENCY'S REPLY IN SUPPORT OF ITS MOTION FOR RECONSIDERATION AND EMERGENCY MOTION TO COMPEL PRODUCTION OF THE SETTLEMENT AGREEMENT

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October 26, 2016

Plaintiffs oppose FHFA's Motion for Reconsideration and Emergency Motion to Compel Production of the Settlement Agreement solely on the grounds that the purported stipulation of dismissal "ended this case and mooted all pending motions." Opp. (Dkt 53) at 2. Their argument, which is premised entirely on inapplicable case law, ignores controlling and persuasive authority confirming that this Court's jurisdiction has not been divested by the invocation of Rule 41(a)(1) by an improper plaintiff. Plaintiffs' position is wrong for at least three dispositive reasons.

First, Plaintiffs rely heavily on *Anago Franchising, Inc. v. Shaz, LLC*, 677 F.3d 1272 (11th Cir. 2012) to argue that the stipulation of dismissal was "self-executing" and thus ended the case automatically. Opp. at 1. But *Anago* has no application here: instead, it addresses only the effect of routine Rule 41(a)(1) dismissals entered without objection as to the stipulating parties' authority to control the litigation. *See Anago*, 677 F.3d at 1277-78 ("a *properly* stipulated dismissal under Rule 41(a)(1)(A)(ii) is self-executing and does not require judicial approval . . ." (emphasis added; internal citations and quotation marks omitted)). That a stipulated dismissal is "self-executing" in cases where there is no question that the party executing the dismissal was the proper plaintiff to control the litigation has no bearing on this case. Here, where the court has been presented with a substantial question whether the shareholder plaintiffs are the proper parties to prosecute or dismiss the claims alleged in their complaint, it has jurisdiction to determine whether the Plaintiffs have the ability to "properly stipulate[]" to dismissal in the first place. *Id.* at 1277. Rule 41(a)(1) cannot apply to automatically terminate a case where the only proper plaintiff in the action is not a party to the stipulation.

Second, existing Eleventh Circuit precedent that *does* apply to these particular circumstances contravenes any purportedly automatic effect of the notice of dismissal. As the court recognized in *University of South Alabama v. American Tobacco Co.*, 168 F.3d 405 (11th Cir. 1999), when—as here—it is uncertain whether "the proper plaintiff ha[s] filed [the] Notice of Dismissal in th[e] proceeding," the purported Rule 41(a)(1) dismissal notice is *not* "effective immediately" and the court *may* exercise jurisdiction to resolve matters necessary "to determine whether the notice . . . satisfied the requirements of Rule 41(a)(1)." *Id.* at 409. As the Eleventh Circuit explained, "[o]rdinarily, a Rule 41(a)(1) voluntary dismissal is effective immediately . . . In the instant case, however, the Attorney General's Notice of Dismissal demanded more than a perfunctory voluntary dismissal analysis" because "it was by no means clear that the proper plaintiff had filed [the] Notice of Dismissal in th[e] proceeding . . ." *Id.* Accordingly, as the Eleventh Circuit observed, "in order to determine whether the Attorney General's notice satisfied the requirements of Rule 41(a)(1), the district court first had to determine that the University was an agency of the state, that the University was subject to the authority of the Attorney General to control all litigation in the state, and hence, that the Attorney General had the authority to file a Notice of Dismissal." *Id.*

Third, this court retains jurisdiction to "decline to permit a voluntary [Rule 41(a)(1)] dismissal" when the dismissal would otherwise "short-circuit[] the judicial process." *E.g. Green v. Nevers*, 111 F.3d 1295, 1301 (6th Cir. 1997) (collecting cases). Such short-circuiting of the judicial process is precisely what Plaintiffs attempt here. Accordingly, the "inherent power" of the district courts to "refus[e] to give effect to [a] stipulated dismissal" such as the one here that would undermine the judicial process provides an independent basis for this Court's continued

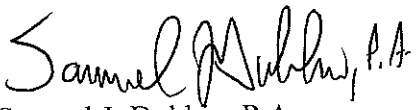
jurisdiction. *Id.* at 1300-01 (affirming district court's refusal to give effect to voluntary dismissal notice) (internal citation omitted).

CONCLUSION

For the foregoing reasons and those stated in FHFA's motions, the Court should grant FHFA's Emergency Motion to Compel.

Dated: October 26, 2016

Respectfully submitted,



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CERTIFICATE OF SERVICE

The undersigned certifies that, on October 26, 2016, 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. I also served the following counsel of record via e-mail:

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