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

ANTHONY R. EDWARDS, *et al.*,

Plaintiffs,

v.

DELOITTE & TOUCHE, LLP,

Defendant.

No. 1:16-cv-21221

THE FEDERAL HOUSING FINANCE AGENCY'S
OPPOSITION TO PLAINTIFFS' RULE 59(e) MOTION

A decision to alter or amend the judgment is "an extraordinary remedy to be employed sparingly." *Ponamgi v. Safeguard Servs. LLC*, No. 11-62119-CIV, 2013 WL 12080163 (S.D. Fla. May 30, 2012) (quotation marks and citation omitted). Former plaintiff Shareholders' Rule 59(e) motion (Doc. # 57) (the "Motion") does not come close to justifying their request to overturn this Court's order granting FHFA's motion to substitute (Doc. # 50) (the "Order").

First, rather than raising newly-discovered evidence, intervening changes in the law, or manifest errors of fact or law, the Shareholders largely re-hash the same failed arguments they raised in originally opposing FHFA's motion to substitute. The Court correctly rejected those arguments in the January 18, 2017 Order , substituted FHFA as Plaintiff, and subsequently granted FHFA's motion to dismiss this suit (*see* Doc. #56). There is no need to revisit Plaintiffs' arguments here. Indeed, this Court's conclusion is bolstered by the most recent authority from the Delaware Supreme Court.

Next, apparently recognizing this fact, the Shareholders muster a hodgepodge of new arguments and legal theories they could have, but for reasons known only to them, opted not to include in opposing FHFA's motion to substitute. Now that the Court has correctly rejected all the arguments that the Shareholders deemed of sufficient merit to include in their failed Opposition, they seek a "second bite" with new arguments that apparently failed to pass muster for inclusion in their original Opposition. Even if the Shareholders' failure to pursue these arguments was due to mere inadvertence rather than to a strategic decision not to include because they were not sufficiently strong, Rule 59(e) and this Court's precedents squarely preclude the Shareholders' from belatedly pursuing them now, particularly in light of the fact that the Court already has granted our unopposed Motion to Dismiss. Indeed, such an approach would inevitably lead to piecemeal, serial litigation.

In all events, to the extent the Court reaches the merits of any of the Shareholders' new arguments, the Court should reject those arguments on the basis of its fully dispositive ruling in this case that negligent misrepresentation claims are derivative, not direct.

I. The Shareholders Are Not Entitled to Rule 59(e) Relief

The Shareholders argue the Court committed a "manifest error" of law in finding FHFA the only proper plaintiff in this suit. Motion at 1-2. As the Eleventh Circuit has explained, however, "manifest error occurs only if the district court failed to apply the correct legal standard, reached a decision squarely foreclosed by precedent, or committed a plain and indisputable error 'that amounts to a complete disregard of the controlling law of the credible evidence in the record.'" *Negron v. Secretary, Fla. Dep't of Corrections*, 643 F. App'x 898, 901 (11th Cir. 2016), *quoting In re District of Columbia*, 792 F.3d 96, 98 (D.C. Cir. 2015). This Court's Order granting substitution contains no "manifest error" of law; none of the Shareholders' arguments justify overturning this Court's substitution opinion.

A. The Shareholders' Rule 59(e) Motion is Replete With Failed Arguments This Court Already Correctly Rejected

"An unhappy litigant may not use a Rule 59(e) motion simply to relitigate old matters, raise forgotten arguments, or present evidence that could have been, but was not, raised prior to the entry of judgment." *Fisher v. Carnival Corp.*, No. 11-22316-CIV, 2013 WL 12061861, at *1 (S.D. Fla. July 29, 2013) (Scola, J.). This principle is echoed in the very authority cited on the first page of the Shareholders' Rule 59(e) Motion. *See Arthur v. King*, 500 F.3d 1335, 1343 (11th Cir. 2007) ("'[A] Rule 59(e) motion [cannot be used] to relitigate old matters, raise argument or present evidence that could have been raised prior to the entry of judgment[.]'") (brackets in original, *quoting Michael Linet, Inc. v. Village of Wellington, Fla.*, 408 F.3d 757, 763 (11th Cir. 2005)). Further, as this Court has explained in discussing motions under Rules 59(e) and 60(b):

> It is an improper use of the motion to reconsider to ask the Court to rethink what the Court already thought through—rightly or wrongly. The motion to reconsider would be appropriate where, for example, the Court has patently misunderstood a party, or has made a decision outside the adversarial issues presented to the Court by the parties, or has made an error not of reasoning but of apprehension. A further basis for a motion to reconsider would be a controlling or significant change in the law or facts since the submission of the issue to the Court. Such problems rarely arise and the motion to reconsider should be equally rare.

Rosenwasser v. All Scripts Healthcare, LLC, No. 11-80493-CIV, 2012 WL 3759031, at *1 (S.D. Fla. Aug. 29, 2012) (quoting *Z.K. Marine, Inc. v. M.V. Achigetis*, 808 F. Supp. 1561, 1563 (S.D. Fla 1992)). Put simply, a Rule 59(e) motion "is not a vehicle for rehashing arguments the Court has already rejected or for attempting to refute the basis for the Court's earlier decision." *Parker v. Midland Credit Mgmt., Inc.*, 874 F. Supp. 2d 1353, 1359 (M.D. Fla. 2012).

There is no reason for the Court to revisit its decision to reject the Shareholders' arguments against substitution. But that is exactly what the Shareholders ask the Court to do

here. Their reconsideration arguments are framed around their familiar refrain that a "wrong may harm both the corporation and its shareholders directly," and thus "can be challenged through either a direct or a derivative action." Motion at 4 (citing *Gatz v. Ponsoldt*, 925 A.2d 1265, 1278 (Del. 2007); *Gentile v. Rossette*, 906 A.2d 91, 99 (Del. 2006)). The Shareholders further argue they are not required to allege they suffered any individualized harm separate and apart from any harm to the company. *See* Motion at 6.

But the Shareholders already made these same arguments, citing the very same cases, in opposing the motion to substitute: "some wrongs harm *both* the corporation and its stockholders directly and can be challenged through *either* derivative or direct actions." Opposition to Motion to Substitute, at 12 (Doc. # 20) (citing *Gatz* & *Gentile*); *see also id.* at 13 (arguing that the Shareholders' alleged injury is "not dependent on an injury to the corporation," although the Shareholders also allege the Third Amendment "injured Fannie").

In granting substitution, the Court thoroughly considered and rejected these arguments. Order at 9 (holding the "alleged harms are premised on harms to Fannie Mae rather than the Plaintiffs independently"). In particular, the Court held the *Gentile* exception inapplicable because the alleged conduct at issue here (a) did not involve the issuance of new shares, let alone "excessive shares;" and (b) did not affect the voting power of either Treasury or the Shareholders. *See* Order at 10. The Court held that, because the Shareholders' claims (including their negligent misrepresentation claims) "rest entirely on economic harm to the value of [the Shareholders'] shares," those claims are derivative. Order at 9-10.

Further, the most recent Delaware authority confirms the soundness of this Court's conclusion that the claims are derivative. In *El Paso Pipeline GP Co., L.L.C. v. Brinckerhoff*, --- A. 3d ----, 2016 WL 7380418 (Del. Dec. 20, 2016), the Delaware Supreme Court re-affirmed the

black-letter rule that "to prove that a claim is direct, a plaintiff must demonstrate that the duty breached was owed to the stockholder *and that he or she can prevail without showing an injury to the corporation.*" *Id.* at *10 (emphasis added) (quotation marks and citation omitted). In reversing authority on which the Shareholders relied in their Opposition to the Motion to Substitute, at 14-15 (Doc. #20), the court also confirmed that claims—like the Shareholders' claims here—that "naturally assert that the corporation's funds have been wrongfully depleted" are based upon harm to the corporation, and any harm to the stockholders comes "only derivatively so far as their stock loses value." *Id.* Moreover, the court specifically rejected application of the *Gentile* exception (and affirmed its narrow scope) because the claims at issue in that case—like the Shareholders' claims here—were not premised upon any issuance of excessive shares to a controlling shareholder that diluted minority shareholder voting rights. *See id.* at *13 ("We decline the invitation to further expand the universe of claims that can be asserted 'dually' to hold here that the extraction of solely economic value from the minority by a controlling stockholder constitutes direct injury.").

In sum, this Court's Order was correct, and Rule 59(e) does not permit the Shareholders to regurgitate the same failed arguments the Court previously and properly rejected.

B. The Shareholders' "New" Arguments Are Waived Because They Were Not Raised in Opposing the Motion to Substitute.

Having failed with their first set of arguments, the Shareholders for the first time raise several arguments they failed to include in their Opposition in support of their erroneous theory that the negligent misrepresentation claims are direct, not derivative. But, again, as this Court has recognized, "[a]n unhappy litigant may not use a Rule 59(e) motion simply to . . . raise forgotten arguments, or present evidence that could have been, but was not, raised prior to the entry of judgment." *Fisher*, 2013 WL 12061861, at *1 (Scola, J.); *accord Hardy v. Wood*, 342 F.

App'x 441 (11th Cir. 2009) (same). Accordingly, in a motion for reconsideration, "any arguments the party failed to raise in the earlier motion will be deemed waived." *Vila v. Padron*, No. 04–20520–CIV, 2005 WL 6104075, at *1 (S.D. Fla. Mar. 31, 2005); *see also Paz v. Seterus, Inc.*, Civ. No. 14-62513, 2016 WL 3948058, at * (S.D. Fla. May 12, 2016) (same).

Here, the Shareholders' new arguments raised for the first time in their Rule 59(e) motion are waived for failure to raise them during the briefing on FHFA's motion to substitute, despite their being fully available at the time. In FHFA's motion to substitute, for example, FHFA specifically addressed the Delaware Supreme Court's decision in *Citigroup, Inc. v. AHW Investments Partnership*, 140 A.3d 1125 (Del. 2016), explaining why that case did not render any of the Shareholders' claims direct. *See* FHFA's Renewed Motion to Substitute, at 14-15 (Doc. #15). In opposing that motion, the Shareholders conceded the issue by choosing *not to address the Citigroup decision at all*. *See* Plaintiffs' Opposition to FHFA's Renewed Motion to Substitute (Doc. #20) (the "Opp."). Instead, the Shareholders pursued *other* arguments under *different* strains of Delaware law—namely, by arguing the Shareholders' claims were based on alleged "dilution" of their stock via the Third Amendment, and thus allegedly fit within the *Gentile* exception. *See id.* at 10-16. As discussed above, this Court rightly rejected their arguments. Now, in their motion to amend this Court's judgment, the Shareholders attempt to introduce *Citigroup* and use it to raise new arguments that the Shareholders' misrepresentation claims are direct. *See* Motion at 4-9. Rule 59(e) squarely precludes the Shareholders' effort to secure a "second bite" by asserting a new round of arguments they failed—for whatever reason—to present the first time around. *Fisher*, 2013 WL 12061861, at *1.

Similarly, the Shareholders improperly chide the Court for not analyzing the negligent misrepresentation claims separately from the aiding and abetting breach of fiduciary duty claims

to determine whether the claims were derivative or direct. *See* Motion at 2, 9-10. But the Shareholders fail to acknowledge that their own opposition suffered the same purported flaw—it analyzed all of the claims *together*, not separately.[1] This Court's analysis was sound, and simply tracked the manner in which the Shareholders presented the arguments they actually asserted.

Again, having pursued a failed legal strategy, the Shareholders may not use Rule 59(e) to reframe their arguments or to recast their claims in a new manner they believe may yield a different result. Further, "[b]ecause Plaintiff's motion falls woefully short of the Rule 59(e) standard, the Court need not address Plaintiff's substantive arguments." *Parker*, 874 F. Supp. 2d at 1359.

C. The Shareholders' New Arguments Are Meritless In Any Event

This Court properly concluded that the Shareholders' negligent misrepresentation claims are derivative because they necessarily flow through the corporation. *See* Order at 8-11. In their Motion, the Shareholders assert that to state a direct claim, they need only "allege that [they] suffered some individualized harm not suffered by all of the shareholders at large." Motion at 6. This is wrong, and the very case the Shareholders cite confirms that, to assert a direct claim, the Shareholders must allege that they "suffered harm *independent of any injury to the corporation* that would entitle [them] to an individualized recovery. . . ." *Feldman v. Cutaia*, 951 A.2d 727, 732-33 (Del. 2008) (emphasis added). Moreover, even if the test for direct claims were based on the Shareholders' ability to show some individualized harm not common to all shareholders (and

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[1] *See, e.g.*, Opp. at 4 (arguing the "Plaintiffs' claims for Negligent Misrepresentation *and Aiding and Abetting Breach of Fiduciary Duty*, premised upon the dilution of Plaintiffs' shares and associated rights, are direct claims") (emphasis added); *id.* at 12 (arguing: "In this case, the harms for which Plaintiffs seek redress—breaches of fiduciary duty and negligent misrepresentations that resulted in the unlawful transfer of the economic bundle of rights and value of their stock to a dominant shareholder—were suffered by Plaintiffs directly.").

it is not), the Shareholders have failed to meet that test here. If the alleged harm is the result of the Net Worth Sweeps and accompanying actions, then *all* shareholders suffered the exact same harm—diminution in the value of the company—from the challenged conduct, and the recovery they seek is simply in proportion to their holdings and is antecedent to (and not dependent on) reliance on the company's audited financial statements.[2]

The Shareholders also assert that "a plaintiff should not be precluded from bringing a direct suit simply because he alleged harm that was related *in some way* to the diminution in the value of his shares." Motion at 6. As recently confirmed in *El Paso*, however, the Shareholders' negligent misrepresentation claims can be direct only if the Shareholders were injured *independently* of the harm to Fannie Mae. *See El Paso*, 2016 WL 7380418, at *10. Again, the Shareholders cannot satisfy this basic requirement of a direct claim because the alleged misrepresentations allegedly injured Fannie Mae in the first instance by reducing its corporate value and, in turn, its share value. *See* Order at 9 (recognizing Plaintiffs' allegations "throughout the Complaint that the Net Worth Sweep harmed Fannie Mae and their stock value"). "Any economic harm to [the Shareholders] devolved upon [them] as . . . equity holder[s] in the form of the proportionately reduced value of [their] shares—a classically derivative injury." *Id.*

Nor are the Shareholders correct that their claims for negligent misrepresentation are somehow rendered direct by the Delaware Supreme Court's decision in *Citigroup*. Motion at 4-7 (citing *Citigroup*, 140 A.3d at 1127)). Even assuming that the Shareholders' new argument is properly raised now—which it is not—it does not support the conclusion that their negligent misrepresentation claims are direct or that this Court's judgment should be amended. In

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[2] *See infra* at 9-10. By contrast, in a stock-drop case, only those shareholders who bought at inflated prices and sold after corrective disclosures suffered harm.

Citigroup, the Delaware Supreme Court wrote that the misrepresentation claims asserted were "direct claims because they belong to the [share]holders and are ones that only the [share]holders can assert, not claims that could plausibly belong to the issuer corporation." 140 F.3d at 1138 (emphasis added). The Court acknowledged that for some claims that the issuer company could not assert, there was no need to reach the two-pronged test in *Tooley*. By contrast, however, that same *Citigroup* court held that where a claim "could plausibly belong" to the company and is not a claim "that only the [share]holders can assert," the *Tooley* analysis must be used to determine whether the claim needs to be brought through the company or directly by the holder. *Citigroup*, 140 F.3d at 1138 (concluding that holder claims asserted against Citigroup could not plausibly belong to Citigroup itself).

Here, unlike in *Citigroup*, Fannie Mae *could* assert the same negligent misrepresentation claims against the defendant Deloitte as the Shareholders; Deloitte delivered its audit reports to (and thus is in privity with) Fannie Mae.[3] The Shareholders acknowledge that this Court should "look to the nature of the wrong alleged, not merely . . . the form of the words in the complaint." Motion at 2 (quoting *In re Syncor Int'l Corp. S'holders Litig.*, 857 A.2d 994, 997 (Del. Ch. 2004)). FHFA could not agree more. The nature of the breach of duty and harm alleged by the Shareholders makes clear that this claim is not one that "only the [share]holders can assert."[4]

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[3] *See* Restatement (Second) of Torts § 552 (977) (limiting tort liability to "persons for whose benefit and guidance [the speaker] intends to supply the information or knows that the recipient intends to supply it"); *id.* at cmt. g (observing that "[t]he person for whose guidance the information is supplied is often the person who has employed the supplier to furnish it").

[4] Moreover, unlike the former shareholder plaintiffs in *Citigroup*, who could not benefit from an award of damages to the company, the Shareholders have not sold their stock in Fannie Mae; they continue to hold it today. *See, e.g.*, Compl. ¶ 11 (alleging that Shareholders "were shareholders of Fannie Mae during all times relevant to this action). Accordingly, the Shareholders could benefit from an award of damages to the company. Indeed, any alleged harm suffered by the Shareholders would be measured by the alleged lost value of their stock, and thus

(footnote continued on next page)

Indeed, the Shareholders' emphasis on individual reliance is a red herring. *See* Motion at 6-9. As this Court has aptly concluded, the Shareholders' conclusory assertion of reliance on audit reports does not render direct a claim premised on duties and harms to "to Fannie Mae rather than the Plaintiffs independently." Order at 8-9. In their motion, the Shareholders newly try to assert individual harms by reference to typical investor claims of negligent misrepresentation, Motion at 7-9, but these cases are inapposite to the "upside-down" claim the Shareholders have asserted here.[5] In a typical claim for negligent misrepresentation, and in cases on which the Shareholders rely,[6] plaintiffs claim that they were induced by *overstated* financial results to purchase securities at inflated prices and that those purchases, in turn, caused direct harm to the plaintiffs who bought or held stock in direct reliance on the financial statements. Here, by contrast, the Shareholders are claiming that their stock lost value (or failed to gain value) because the strength of Fannie Mae's balance sheet was allegedly *understated*, which in

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(footnote continued)
would be coextensive with any alleged harm to Fannie Mae. This stands in contrast to the harm the plaintiffs allegedly suffered in *Citigroup*, which was based on the difference in price from when the plaintiff would have sold his stock and when he actually sold his stock. Here, the Shareholders never sold their stock, so their damages would not be particularized but would be co-extensive with any alleged harm suffered by Fannie Mae.

[5] The Shareholders' argument that individualized holder reliance somehow renders their claims direct hinges on out-of-circuit decisions deeming "inducement" actions direct rather than derivative. Motion at 7-9 (citing, *e.g.*, *Poptech, L.P. v. Stewardship Inv. Advisors, LLC*, 849 F. Supp. 2d 249 (D. Conn. 2012); *Stephenson v. Citco Grp. Ltd.*, 700 F. Supp. 2d 599 (S.D.N.Y. 2010)). Any "reliance" summarily asserted in the Complaint here—*e.g.*, Compl. ¶ 105 ("[Shareholder] justifiably relied upon the Deloitte Audit Reports in purchasing or holding Fannie Mae Stock.")—does not constitute "inducement." Nor could "the nature of the wrong" sustain an inducement claim, as the shareholder cannot credibly suggest that they were induced to purchase or hold Fannie Mae stock by *understatements* of Fannie Mae's financial statements.

[6] *See, e.g.*, *Stephenson*, 700 F. Supp. 2d at 608 (alleging that inflated financial statements induced plaintiff to invest in Madoff Ponzi scheme); *Poptech*, 849 F. Supp. 2d at 260-61 (alleging that misrepresentations and omissions about Fund's financial problems induced plaintiff to invest in the Fund).

turn permitted FHFA and Treasury to conduct the Net Worth Sweeps that allegedly depleted Fannie Mae's assets. Compl. ¶¶ 9, 37-42, 95, 98. These are indirect harms that hinge on the allegedly depleted stock price and inexorably run through Fannie Mae—the stuff of "classically derivative" claims. Order at 8-9 (citing *In re J.P. Morgan Chase & Co. S'holder Litig.*, 906 A.2d 766, 771 (Del. 2006)). In short, this is not a case where the Shareholders are contesting their dividend payments or interference with their voting rights, the types of claims that would be direct and could not also be asserted by Fannie Mae.

Further, the Shareholders cannot identify any duties owed to them by Deloitte or any right of action against Deloitte, as these duties are owed to Fannie Mae, the party with whom Deloitte is in privity and to whom Deloitte was to deliver its audit reports. As the Restatement (Second) of Torts and its drafters' comments make clear, even though an auditor generally expects market participants to use its audit opinion when evaluating the audited company, the auditor is not liable to such "lenders, investors, shareholders, creditors, purchasers and the like," though they may suffer loss by relying on the audit opinion or the audited financials to their detriment. Restatement (Second) of Torts § 552, ill. 10. Similarly, courts have confirmed that accountants' liability to third parties must be very narrowly limited, and not to include shareholders. *See, e.g.*, *Hodge v. D.C. Hous. Fin. Agency*, No. CIV. A. 92-2347, 1993 WL 433601, at *2 (D.D.C. Oct. 15, 1993) (following "Judge Cardozo's classic opinion which held that accountants were immune from liability unless the plaintiff's relationship with the accountant is 'so close as to approach that of privity'"); *Machata v. Seidman & Seidman*, 644 So. 2d 114, 114 (Fla. Dist. Ct. App. 1994) (holding that an accountant is not "liable to the shareholders of a corporation, who participate in stock transactions in reliance upon an Audit Report and Audited Financial Statements prepared by the accountant").

As the alleged duty of care runs to Fannie Mae and the alleged harm runs through Fannie Mae, and not its shareholders, the Shareholders cannot be said to assert "a claim based on [their] own right[s]," as necessary under *Citigroup* to deem the claim direct. 140 A.3d at 1139-40. This Court recognized the distinction, assessed "the nature of the wrong" and harm alleged, and determined that the Shareholders' claims were derivative under Delaware law. Order at 8-9. No amendment to this judgment is warranted.[7]

II. The Shareholders Are Not Entitled to Amend Their Complaint

The Court should also deny the Shareholders' request for leave to amend their complaint "to further demonstrate the direct nature of all of Plaintiffs' claims." Motion at 10.

First, the Shareholders could have asked for leave to amend as part of the original briefing on the Motion to Substitute. Having failed to do so, they have now waived that option. *See Arthur,* 500 F.3d at 1343 ("Rule 59(e) motions [cannot be used] to . . . raise arguments or present evidence that could have been raised prior to the entry of judgment").

Second, pleading amendments are governed by Fed. R. Civ. P. 15(a), and the Eleventh Circuit has made clear that Rule 15(a) "by its plain language, governs amendments of pleadings *before* judgment is entered; it has no application *after* judgment is entered." *Jacobs v. Tempur-Pedic Int'l, Inc.*, 626 F.3d 1327, 1344 (11th Cir. 2010). Once judgment is entered, plaintiff may seek leave to amend only "if he is granted relief under Rule 59(e) or 60(b)(6)." *Id.*, quoting

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[7] Moreover, even if the Shareholders' claims were direct—and they are not—substitution still would be required because FHFA succeeded to "all rights" of the Shareholders, not just the right to pursue derivative claims, and permitting Plaintiffs to proceed with their claims would violate 12 U.S.C. § 4617(f). *See* FHFA's Renewed Motion to Substitute, at 6-10, 16-17 (Doc. #15). In its Order granting substitution, the Court found that it "need not resolve" whether FHFA has succeeded to direct shareholder claims (and the Court did not address Section 4617(f)) because the Court correctly concluded that the Shareholders' claims are derivative. *See* Order at 8. The Court can and should take the same approach today.

United States ex. Rel. Atkins v. McInteer, 470 F.3d 1350, 1361 n.22 (11th Cir. 2006); *see also Lee v. Alachua Cty. Florida*, 461 F. App'x 859 (11th Cir. Feb. 21, 2012) (same).

Finally, unless and until this Court alters or amends its Order substituting FHFA as plaintiff—and as explained above, it should not—FHFA remains "the master of the complaint." *May v. Sasser*, --- F. App'x ----, 2016 WL 6694540, at *2 (11th Cir. Nov. 15, 2016). Because the Shareholders are no longer plaintiffs in (or even parties to) this suit, only FHFA has the right to seek leave to amend the Complaint.

Accordingly, the Shareholders' request for leave to amend their Complaint as an alternative to granting their Rule 59(e) motion to amend the judgment is plainly improper.

CONCLUSION

The Court's Order granting the motion to substitute fully and fairly addressed the Shareholders' argument that the claims they asserted were direct. The Court correctly rejected that argument, found the claims to be derivative, and granted FHFA's motion to substitute as plaintiff in place of the Shareholders. The Court should deny the Shareholders' Rule 59(e) motion.

Dated: March 1, 2017

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies that, on March 1, 2017, 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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