UNITED STATES COURT OF FEDERAL CLAIMS

APPALOOSA INVESTMENT LIMITED PARTNERSHIP I; PALOMINO FUND LTD.; PALOMINO MASTER LTD.; AND AZTECA PARTNERS LLC, Plaintiffs, v. THE UNITED STATES OF AMERICA, Defendant.	Case No. 18-370C (Judge Sweeney)

FIRST AMENDED COMPLAINT

Plaintiffs Appaloosa Investment Limited Partnership I, Palomino Fund Ltd., Palomino Master Ltd., and Azteca Partners LLC (collectively, "Appaloosa"[1]), by and through the undersigned attorneys, hereby bring this action against the United States of America seeking (a) compensation for the taking of their property in violation of the Fifth Amendment to the Constitution or (b) in the alternative, the illegal exaction of their property in violation of the Fifth Amendment; (c) breach of fiduciary duty; and (d) breach of implied contract. In support, Appaloosa alleges as follows:

NATURE AND SUMMARY OF THE ACTION

1. This is an action to redress the United States' wiping out of Appaloosa's shares in the Federal National Mortgage Association ("Fannie Mae") and the Federal Home Loan Mortgage Corporation ("Freddie Mac" and, collectively with Fannie Mae, the "Companies") by seizing for itself all earnings of the solvent Companies in perpetuity.

[1] Where applicable herein, "Appaloosa" includes reference to predecessor funds of Appaloosa Investment Limited Partnership I, Palomino Master Ltd., and Azteca Partners LLC (as alleged in Paragraphs 13-16 hereof).

2. On August 17, 2012, two arms of the United States—the Department of Treasury ("Treasury") and the Federal Housing Finance Agency ("Agency" or "FHFA"), which was purportedly acting as the conservator of the Companies—agreed between themselves to a "Third Amendment to Amended and Restated Senior Preferred Stock Purchase Agreement" (the "Sweep Amendment"). Through the operation of the Sweep Amendment, the United States has expropriated hundreds of billions of dollars in net worth from the Companies, to benefit the government at the expense of the Companies' other shareholders. At the time of the Sweep Amendment, Appaloosa held several series of junior preferred stock issued by the Companies (the "Junior Preferred Stock"), with a "stated value" and/or "liquidation preference" (term varies by stock certificate) in excess of $760 million. As a direct result of the Sweep Amendment, Appaloosa has suffered severe economic loss to its property interests in the Junior Preferred Stock.

3. The Companies are (as Congress has provided) private, for-profit, shareholder-owned corporations whose purpose is to support liquidity, stability, and affordability in the secondary mortgage market by securitizing mortgage loans originated by primary market lenders and selling the bundled loans to investors.

4. In July 2008, amid the financial crisis in the housing and mortgage markets, Congress enacted the Housing and Economic Recovery Act of 2008 (the "Recovery Act"). The Recovery Act created the Agency and granted its director the discretion, under certain circumstances, to place the Companies into conservatorship or receivership. The Recovery Act also granted to Treasury temporary emergency authority to purchase obligations or other securities of the Companies under certain circumstances.

5. On September 6, 2008, the Agency placed the Companies into conservatorship

under itself. In such case, Congress in the Recovery Act expressly charged the Agency, as conservator, to seek to return the Companies to a "sound and solvent condition" and to "preserve and conserve the assets and property" of the Companies.

6. The next day, Treasury, via the Agency, entered into Senior Preferred Stock Purchase Agreements (the "Treasury SPAs") with the Companies. Under the Treasury SPAs, Treasury committed to invest in the Companies in exchange for preferred stock that ranked senior to all series of Junior Preferred Stock (the "Treasury Senior Preferred Stock"). Treasury received for this commitment, among other things, (a) $1 billion of Treasury Senior Preferred Stock, (b) a warrant to purchase up to 79.9% of the common stock of each Company for a nominal price, (c) a liquidation preference equal to the $1 billion initial commitment fee plus the amount invested by Treasury in the applicable Company, and (d) a periodic commitment fee, in an undetermined amount, to be paid beginning in 2010. Through these and other provisions of the Treasury SPAs, Treasury acquired the ability to control the Companies.

7. Consistent with its statutory mandate under the Recovery Act, as well as historical understandings of conservatorship against which Congress had enacted it, the Agency assured the market that same day—and repeatedly for more than three years thereafter—that the goal of the conservatorship was to "return[] the entities to normal business operations"; that the conservatorship would be temporary and would terminate once the Companies had been restored "to a safe and solvent condition"; that the Junior Preferred Stock would remain outstanding and continue to trade; and that stockholders would "continue to retain all rights in the stock's financial worth, as such worth is determined by the market."

8. At least by 2011, Treasury and the Agency recognized that the Companies had stabilized and their financial performance was improving. By the first and second quarters of

2012, Fannie Mae and Freddie Mac, respectively, reported positive net worth and announced that they would not be requesting a further draw under the Treasury SPAs. Moreover, the Companies' renewed profitability suggested that they might well soon recognize sizeable deferred tax assets.

9. On the heels of such news, Treasury and the Agency (as purported conservator of the Companies) on August 17, 2012, entered into the Sweep Amendment, which eliminated the dividend payable under the Treasury Senior Preferred Stock (10% of the outstanding amount drawn, if paid in cash) and imposed a requirement that the Companies each quarter pay to Treasury their entire net worth in perpetuity. Thus, the Sweep Amendment barred the Companies from ever realizing a profit and from ever paying down Treasury's liquidation preference. It thereby eliminated any possibility that Appaloosa could ever receive any value from the Companies based on their property interests in the Junior Preferred Stock.

10. The Sweep Amendment appropriated the Companies' net worth in perpetuity to the benefit of the United States at the expense of the Companies and their shareholders, including Appaloosa. As Treasury admitted, the purpose was to take "every dollar of earnings each firm generates . . . to benefit taxpayers," ensuring that shareholders other than the United States received *no* benefit from those earnings. The United States paid no compensation to holders of the Junior Preferred Stock for this taking of their valuable property rights for the public benefit.

11. Appaloosa purchased Junior Preferred Stock before the Agency capitulated to Treasury's Sweep Amendment, because Appaloosa believed in the future economic prospects of the Companies, reasonably relied upon the Agency's assurances of its intention that Appaloosa and other holders of stock would retain their property rights, and expected the Companies to emerge from conservatorship as the Agency had promised repeatedly. At the time of purchase,

Appaloosa had no reasonable ground to expect that the United States instead would expropriate its investment and force shareholders into years of litigation to recoup their investments. Accordingly, through this action, Appaloosa seeks the just compensation to which it is entitled under the Fifth Amendment to the United States Constitution for the government's taking of its property, as well as remedies under other causes of action detailed below—illegal exaction, breach of fiduciary duty, and breach of implied contract.

JURISDICTION AND VENUE

12. This Court has jurisdiction under 28 U.S.C. § 1491(a)(1) because this suit asserts claims against the United States founded upon the Fifth Amendment and on a contract to which the United States is a party. Venue is proper under 28 U.S.C. § 1491(a)(1).

THE PARTIES

13. Plaintiff Appaloosa Investment L.P. I ("AILP") is a Delaware limited partnership that, as of market close on August 16, 2012, held 1,618,330 shares of Junior Preferred Stock issued by Fannie Mae with a stated value and/or liquidation preference of $71,419,500, and 2,691,654 shares of Junior Preferred Stock issued by Freddie Mac with a stated value and/or liquidation preference of $115,288,900. Plaintiff AILP also holds, as a successor in interest, claims originally held by a fund—which had been under the same investment manager as AILP—named Thoroughbred Fund L.P. ("TFLP"). As of market close on August 16, 2012, TFLP held 1,289,284 shares of Junior Preferred Stock issued by Fannie Mae with a stated value and/or liquidation preference of $57,048,875, and 2,148,342 shares of Junior Preferred Stock issued by Freddie Mac with a stated value and/or liquidation preference of $92,055,275.

14. Plaintiff Palomino Master Ltd. ("Palomino Master") is a British Virgin Islands company. Palomino Master was formed at the end of 2015 in connection with the

restructuring of Palomino Fund Ltd. ("Palomino Fund"), pursuant to which Palomino Master succeeded to all assets and liabilities of Palomino Fund, including, by operation of law, all claims. As of market close on August 16, 2012, Palomino Fund held 2,333,332 shares of Junior Preferred Stock issued by Fannie Mae with a stated value and/or liquidation preference of $103,084,075, and 3,897,770 shares of Junior Preferred Stock issued by Freddie Mac with a stated value and/or liquidation preference of $166,991,350. Plaintiff Palomino Master also holds, as a successor in interest, claims originally held by a fund—which had been under the same investment manager as Palomino Master—named Thoroughbred Master Ltd. ("TML"). As of market close on August 16, 2012, TML held 1,330,878 shares of Junior Preferred Stock issued by Fannie Mae with a stated value and/or liquidation preference of $58,797,550, and 2,225,182 shares of Junior Preferred Stock issued by Freddie Mac with a stated value and/or liquidation preference of $95,326,175.

15. Plaintiff Palomino Fund (as defined in Paragraph 14) is a British Virgin Islands company. As of market close on August 16, 2012, Palomino Fund held 2,333,332 shares of Junior Preferred Stock issued by Fannie Mae with a stated value and/or liquidation preference of $103,084,075, and 3,897,770 shares of Junior Preferred Stock issued by Freddie Mac with a stated value and/or liquidation preference of $166,991,350. As alleged in Paragraph 14 above, Palomino Master succeeded to all assets and liabilities of Palomino Fund in connection with a restructuring of Palomino Fund in 2016. Palomino Fund is nevertheless named as a plaintiff out of an abundance of caution, in the event and to the extent that any claims set forth in this complaint are determined not to have been fully transferred to Palomino Master by operation of law in connection with the 2016 restructuring.

16. Plaintiff Azteca Partners LLC ("Azteca") is a Delaware limited liability

company that began operations in January 2018. Azteca was formed in connection with an internal reorganization of the Appaloosa funds. Azteca's assets were received in respect of capital accounts held by certain investors in AILP and Palomino Master, with the ultimate equitable and beneficial ownership of such contributed assets remaining substantially the same.

17. Defendant United States includes Treasury, the Agency, the Secretary and Director thereof, respectively, and agents acting at their direction.

CONSTITUTIONAL AND STATUTORY PROVISIONS

18. Appaloosa's claims for taking (or, in the alternative, illegal exaction) are founded on the Fifth Amendment to the United States Constitution, which provides in pertinent part that no person shall "be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation." Appaloosa's contract claims are under 28 U.S.C. § 1491(a), which provides for claims founded on a contract with the United States.

FACTUAL ALLEGATIONS

Fannie Mae, Freddie Mac, and their Junior Preferred Stock

19. Fannie Mae is a private stockholder-owned Delaware corporation organized and existing under the Federal National Mortgage Association Charter Act, 12 U.S.C. §§ 1716 *et seq*.[2] It was established in 1938 to promote affordable home ownership by facilitating the financing of home mortgages insured by the Federal Housing Administration. In 1968, Fannie Mae was privatized and reorganized into a government-sponsored entity with access to capital markets. In 1970, it was authorized to purchase conventional mortgages. From 1968

[2] All citations of the U.S. Code are from Title 12 unless otherwise noted.

until 2010, Fannie Mae's stock was traded on the New York Stock Exchange. Its stock continues to trade.

20. Freddie Mac is a private stockholder-owned Virginia corporation organized and existing under the Federal Home Loan Mortgage Corporation Act, §§ 1451 *et seq*. It was established in 1970 to expand the secondary mortgage market. It was initially a wholly owned subsidiary of the Federal Home Loan Bank System, but Congress in 1989 reorganized and privatized it under the Financial Institutions Reform, Recovery, and Enforcement Act ("FIRREA"). Under FIRREA, Freddie Mac became a for-profit corporation owned by private shareholders and had access to capital markets. From 1989 until 2010, Freddie Mac's stock was traded publicly on the New York Stock Exchange. Its stock continues to trade.

21. Three years after enacting FIRREA, Congress established the Office of Federal Housing Enterprise Oversight ("OFHEO"), through the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, to oversee and ensure the capital adequacy and financial safety and soundness of the Companies. OFHEO was authorized to place the Companies into conservatorship in certain circumstances, but did not employ this power.

22. Prior to 2008, Fannie Mae and Freddie Mac issued numerous series of non-cumulative Junior Preferred Stock. These series, respectively as to each Company, are *pari passu* with one another with respect to dividend payments and liquidation preferences, but have priority over the Companies' common stock.

23. Following their privatization, including after the establishment of OFHEO, the Companies operated successfully for decades, raising private capital, generating profits, regularly declaring and paying dividends on their various series of Junior Preferred Stock, and increasing shareholder value. Prior to 2007, Fannie Mae had not reported a full-year loss

since 1985, and Freddie Mac had not since its privatization in 1989. Indeed, the Companies' preferred stock was generally viewed as a conservative and reliable investment—even as of August 8, 2008, after enactment of the Recovery Act and shortly before the imposition of the conservatorship, Fannie Mae's Junior Preferred Stock was rated AA- by S&P, A1 by Moody's, and A+ by Fitch.

The Housing Crisis and the Recovery Act

24. The housing and mortgage markets substantially weakened in 2007, which reduced the value of Fannie Mae and Freddie Mac's guarantee and investment portfolios. Both Companies suffered net losses beginning in 2007. These losses, however, were largely due to credit provisions—which represent *estimates* of future credit losses—that ultimately proved excessive. Actual credit losses from 2007 to 2011 were approximately $140 billion less than anticipated. A significant portion of the losses recorded in that period related to the write-down of deferred tax assets, which the Companies would reverse when they returned to profitability.

25. Notwithstanding these challenges, OFHEO assured the public that the Companies were stable. On March 19, 2008, James Lockhart, then-Director of OFHEO, announced that "both companies. . . have prudent cushions above the OFHEO-directed capital requirements and have increased their reserves," adding that "[w]e believe they can play an even more positive role in providing the stability and liquidity the markets need right now." He also called the idea of a bailout "nonsense in [his] mind," as the Companies were "safe and sound, and they will continue to be safe and sound." *As Crisis Grew, a Few Options Shrank to One*, N.Y. Times (Sept. 7, 2008).

26. Lockhart similarly explained four months later, on July 8, that the Companies were "adequately capitalized, which is our highest criteria." Two days after that, on July 10,

he again confirmed, in a public statement, that Fannie Mae and Freddie Mac were "adequately capitalized, holding capital well in excess of the OFHEO-directed requirement, which exceeds the statutory minimums. They have large liquidity portfolios, access to the debt market and over $1.5 trillion in unpledged assets." This same day, then-Treasury Secretary Henry Paulson testified to the House Financial Services Committee that the Companies' "regulator has made clear that they are adequately capitalized." The then-Chairman of the Federal Reserve, Ben Bernanke, echoed this, also testifying before that committee, on July 16, 2008, that the Companies were adequately capitalized and in no danger of failing. Further, upon information and belief, an August 2008 analysis for the Agency of Freddie Mac's financial condition, by BlackRock, concluded that Freddie Mac's "long-term solvency does not appear endangered—we do not expect Freddie Mac to breach critical capital levels even in stress case."

27. At the end of July 2008, as the decline in the housing and mortgage markets accelerated, Congress passed and President George W. Bush signed the Recovery Act. That Act created FHFA as a new federal agency, replacing OFHEO, and charged it with regulating the Companies. § 4511; § 4513. Mr. Lockhart, who had been running OFHEO, became the Agency's first Director.

28. The Recovery Act gave the Director discretion under certain circumstances to place the Companies into conservatorship or receivership under the Agency. In a sub-section specifying the Agency's "General powers," as either "conservator or receiver," it authorizes the Agency to do a variety of things that include "preserv[ing] and conserv[ing] the assets and property" of the Companies but do not include liquidating them or winding them down. § 4617(b)(2)(B). The Agency as conservator or receiver may repudiate contracts, if done

"within a reasonable period following such appointment," but must in such cases pay damages. § 4617(d)(2).

29. The Recovery Act separately specifies the Agency's "Powers as conservator." It "may, as conservator, take such action as may be" (i) "necessary to put the [Company] in a sound and solvent condition" and (ii) "appropriate to carry on [its] business . . . and preserve and conserve [its] assets and property." § 4617(b)(2)(D). That Act allows a Company to consent to being placed into conservatorship, but also expressly authorizes a non-consenting Company to sue within 30 days to challenge that action. § 4617(a)(3)(I), (a)(5).

30. After specifying the Agency's powers as conservator, the Recovery Act in the next sub-section separately specifies its "Additional powers as receiver." Only here does the Act authorize (indeed, direct) the Agency to wind down a Company, stating that the it "shall place the [Company] in liquidation." § 4617(b)(2)(E). Receivership would terminate any existing conservatorship and trigger an immediate right to judicial review. It also would require numerous other special procedures, including a detailed process for the receiver to determine claims against a Company, which also incorporates an express right of judicial review. § 4617(b)(3); (b)(6).

31. The Recovery Act expressly provides that, even upon appointment of a receiver, the right of the Companies' shareholders "to payment, resolution, or other satisfaction of their claims" is not terminated. § 4617(b)(2)(K).

32. Under the Recovery Act, the Agency in its actions as a conservator or receiver is not to be "subject to the direction or supervision of any other agency of the United States." § 4617(a)(7).

33. In addition to these provisions concerning the Agency's imposition of

conservatorship and receivership, the Recovery Act granted to Treasury the temporary emergency authority—but only until December 31, 2009—to "purchase any obligations and other securities" of the Companies and "determine" those securities' "terms and conditions [and] . . . amounts." § 1455(*l*)(l)(A); § 1455(*l*)(4); § 1719(g).

34. Prior to exercising this temporary authority, the Treasury Secretary was required to "determine that such actions are necessary to: (i) provide stability to the financial markets; (ii) prevent disruptions in the availability of mortgage finance; and (iii) protect the taxpayer." §§ 1455(*l*)(1)(B); 1719(g)(1)(B). He also had to take specified factors into account: (i) the need for preferences or priorities regarding payments to the government; (ii) limits on maturity or disposition of obligations or securities to be purchased; (iii) the Company's plan for the orderly resumption of private market funding or capital market access; (iv) the probability of the Company's fulfilling the terms of any such obligation or other security, including repayment; (v) the need to maintain the Company's status as private and shareholder owned; and (vi) restrictions on the use of Company resources, including limitations on the payment of dividends and executive compensation and any such other terms and conditions as appropriate for those purposes. §§ 1455(*l*)(1)(C); 1719(g)(1)(C).

The Agency Makes Itself the Companies' Conservator, Enters Into (and Amends) SPAs with Treasury During the Authorized Period, and Reassures the Markets

35. In letters to each Company dated August 22, 2008, the Agency found (consistent with the Director's public statements) that each Company met all relevant capital requirements, including additional capital requirements imposed by the Agency above the statutory minimums and requirements arising from the Agency's risk-based capital stress test.

36. Nevertheless, on information and belief, Treasury and the Agency around the beginning of September 2008 sought the consent of the Companies' boards of directors to

place the Companies into conservatorship. The Agency obtained such consent on the ground, in part, that conservatorship would serve the interests of the Companies' shareholders. In exchange for the Agency's promise, the Companies agreed not to challenge being put under conservatorship.

37. On September 6, 2008, the Agency did place each of the Companies into conservatorship. As a result, the Agency, "as conservator," succeeded to "all rights, titles, powers, and privileges of the [Companies], and of any stockholder, officer, or director of [a Company] with respect to the [Company]." § 4617(b)(2)(A)(i). Conservatorship, unlike receivership, does not "terminate" any rights of shareholders. *Compare id. with* § 4617(b)(2)(K)(i) (providing for termination of rights of shareholders in event of receivership, "except for their right to payment, resolution or other satisfaction of their claims, as permitted under subsections (b)(9), (c), and (e)").

38. The next day, exercising its temporary authority under the Recovery Act, Treasury entered into the Treasury SPAs with the Companies (acting through the Agency as conservator). Treasury agreed to provide each Company with a commitment of up to $100 billion, as and when necessary for the Companies to maintain a positive net worth. In exchange, Treasury received one million shares of the Treasury Senior Preferred Stock. Treasury also received: (a) an initial liquidation preference of $1000 per share (equal to $1 billion), plus any outstanding amount drawn from the commitment; (b) a dividend of 10% per annum of the outstanding amount provided by Treasury (which also could be paid "in kind" by increasing the liquidation preference, subject to incurring a 12% accrual rate going forward); (c) warrants to buy up to 79.9% of each Company's common stock for $0.00001 per share, and (d) the right to receive payment of a periodic commitment fee, in an undetermined

amount, to be paid by the Companies quarterly beginning on January 31, 2010. The Treasury Senior Preferred Stock was senior to all Junior Preferred Stock, so that no dividends or liquidation distributions on any Junior Preferred Stock could be paid until after Treasury had received its full dividend or liquidation distributions.

39. In addition, covenants in the Treasury SPAs granted Treasury substantial ability to control the Companies and the Agency's conduct of the conservatorship, by restricting the ability to take certain actions without Treasury's prior written consent. This included restricting their ability to: (a) declare dividends on any outstanding common or preferred stock other than the Treasury Senior Preferred Stock; (b) sell or issue equity interests; (c) terminate the conservatorship; (d) transfer assets; (e) incur indebtedness; (f) enter into a merger, reorganization or recapitalization, or make acquisitions; or (g) enter into transactions with affiliates.

40. The Treasury SPAs also prohibited the Companies from owning more than a specified amount of mortgage assets and restricted the Agency from drawing on the Treasury commitment to pay any subordinated liabilities, including "a claim against [a Company] arising from rescission of a purchase or sale of a security issued by [a Company] . . . or for damages arising from the purchase, sale, or retention of such a security."

41. When he imposed the conservatorship and entered into the Treasury SPAs, Mr. Lockhart took pains to assure shareholders that their interests would be protected, stating that, "in order to conserve over $2 billion in capital every year, the common stock and preferred stock dividends will be eliminated, but the common and all preferred stocks will continue to remain outstanding." He added:

> [I]n order to restore the balance between safety and soundness and mission, FHFA has placed Fannie Mae and Freddie Mac into

> conservatorship. *That is a statutory process designed to stabilize a troubled institution with the objective of returning the entities to normal business operations*. FHFA will act as the conservator to operate the Enterprises until they are stabilized. (Emphasis added.)

42. The Agency in a fact-sheet at the time further stated that "[s]tockholders will continue to retain all rights in the stock's financial worth; as such worth is determined by the market," and that, "[u]pon the [Agency] Director's determination that the Conservator's plan to restore the Company to a safe and solvent condition has been completed successfully, *the Director will issue an order terminating the conservatorship*." (Emphasis added.)

43. Consistent with these assurances, news reports reflected the view that the conservatorship was motivated more by political considerations than financial need: "[Treasury Secretary] Paulson's decision seems to have been a philosophical one, rather than one forced by imminent crisis. Of course, for stagecraft purposes, it was played as impending disaster." *Paulson's Itchy Finger, on the Trigger of a Bazooka*, N.Y. Times (Sept. 9, 2008).

44. The Treasury SPAs were amended on September 26, 2008, to extend the commencement date for the periodic commitment fee by two months, until March 31, 2010. (The fee was never imposed.) The day before, Director Lockhart had again reaffirmed in public testimony to Congress that conservatorship was "a statutory process designed to stabilize a troubled institution with the objective of maintaining normal business operations and restoring its safety and soundness," and that the Agency would act as conservator only "until the [Companies] are stabilized." He further assured Congress that the Companies remained "private" and that "both the preferred and common shareholders have an economic interest in the companies."

45. The Companies did not exercise their express right under the Recovery Act to sue within thirty days to challenge being placed into conservatorships.

46. Under the Obama Administration, the Treasury SPAs were amended twice more before Treasury's temporary emergency purchase authority expired on December 31, 2009. The first was on May 6, 2009, to provide that Treasury could increase the commitment to $200 billion as needed. That same month, the Agency submitted a report to Congress recognizing that "[c]onservatorship is a statutory process designed to restore safety and soundness while carrying on the business of a regulated entity and preserving and conserving its assets and property." The following month, Director Lockhart in public congressional testimony emphasized that, "[a]s the conservator, FHFA's most important goal is to preserve the assets of Fannie Mae and Freddie Mac over the conservatorship period. That is our statutory responsibility." The month after that, in July 2009, the Agency issued a "Strategic Plan 2009-2014," in which it included the following "strategic goal": "The conservatorship of Fannie Mae and Freddie Mac allows the FHFA to preserve the assets of the [Companies], ensure they focus on their housing mission and are positioned to emerge from conservatorship as financially strong." It again emphasized that the conservatorship was "designed to stabilize troubled institutions with the objective of maintaining normal business operations and restoring financial safety and soundness."

47. The second amendment was executed on December 24, 2009. It provided a formulaic maximum commitment of either $200 billion or the amount of the Companies' negative net worth from 2010 to 2012. Neither of these amendments affected the rights of the Companies' shareholders other than the United States.

48. A contemporaneous Treasury memorandum characterized the latter amendment as a "temporary" measure "to support [the Companies] until Congress determines a more sustainable long-term path." It also confirmed that "*[c]onservatorship . . . preserves*

the status and claims of the preferred and common shareholders." (Emphasis added.) Indeed, Treasury officials, writing to the then-Secretary of the Treasury, explained that the Companies already had "moved from being a source of instability during the early stages of the crisis to a stable and critical source of mortgage financing to the market today," and that Fannie Mae and Freddie Mac had only drawn $60 billion and $51 billion, respectively, of the $200 billion available to each.

49. Treasury officials at the time of the last of these amendments also recognized that, as the text of the Recovery Act provides, the deadline of December 31, 2009, "constrained" Treasury's "ability to make further changes to the [Treasury SPAs]."

The Agency Continues to Reassure the Markets, in the Years After Treasury's Emergency Stock-Purchase Authority Expires and as the Housing Market Rebounds

50. Over the next two years, throughout 2010 and 2011, the Agency continued to assure the markets that its intentions as conservator of the Companies were consistent with its statutorily specified "Powers as conservator" (to make the Companies "sound and solvent," "preserve and conserve" their assets and property, and "carry on" their businesses) and ordinary understandings of a conservator's duty to *conserve* a company. *See* § 4617(b)(2)(D). In February 2010, the Agency's new Acting Director, Edward J. DeMarco, told Senate and House leaders that "FHFA is focused on conserving the [Companies'] assets" and "put[ting] [them] in a sound and solvent condition." And in a report to Congress in June 2011, the Agency touted its goals of "preserv[ing] and conserv[ing] each [Company's] assets and property and restor[ing] the [Companies] to a sound financial condition so they could continue to fulfill their statutory mission of promoting liquidity and efficiency in the nation's housing finance markets."

51. Also in June 2011, the Agency recognized in issuing a final rule that "allowing

capital distributions to deplete [a Company]'s conservatorship assets would be inconsistent with the [A]gency's statutory goals, as they would result in removing capital at a time when *the Conservator is charged with rehabilitating the regulated [Company]*." 76 Fed. Reg. 35724, 35727 (June 20, 2011) (emphasis added). The rule underscored that, under the Recovery Act, "[a] conservator's goal is to continue the operations of a [Company], rehabilitate it and return it to a safe, sound, and solvent condition." *Id*. at 35730. In contrast, "[t]he ultimate responsibility of FHFA as receiver is to resolve and liquidate the [Company]." *Id*.

52. Later, on November 10, 2011, Mr. DeMarco continued this public theme, in a letter to the Senate: "By law, *the conservatorships are intended to rehabilitate the [Companies]* as private firms." (Emphasis added.) On December 1, 2011, he reiterated to Congress—quoting his "powers as conservator" as specified in the Recovery Act—that, "as I have noted, FHFA has a statutory responsibility as conservator of the [Companies] to 'take such action as may be: necessary to put the regulated entity in a sound and solvent condition; and appropriate to carry on the business of the regulated entity and preserve and conserve the assets and property of the regulated entity.'"

53. By 2011, and consistent with the Agency's repeated assurance that it was seeking as conservator to rehabilitate the Companies, it was obvious that (as Treasury officials had begun to discern as early as December 2009), the Companies were past the trough in their financial performance. The United States recognized this repeatedly:

- As early as June 2011, on information and belief, in a meeting with restructuring experts from Blackstone, Treasury was told that the Companies were "showing improved financial performance and stabilized loss reserves," and that their tax

assets (unusable in the event of a loss, but valuable in the event of a profit) could generate significant value.

- In October 2011, the Agency observed, in a report published to the public on its website, that the Companies' "actual results" were "substantially better than projected."
- A November 8, 2011, report prepared for Treasury recognized that, "[f]rom December 31, 2012, through September 30, 2018, Freddie Mac is not projected to draw on the liquidity commitment to make its dividend payments [to Treasury under the SPA] because of increased earnings driven by significantly reduced credit losses in 2012 and 2014."
- Upon information and belief, a December 2011 internal Treasury memorandum noted that "both Fannie Mae and Freddie Mac are expected to be net income positive (before dividends) on a stable, ongoing [basis] after 2012 . . . ."
- Upon information and belief, a presentation sent to senior Treasury officials in February 2012 stated that "Fannie and Freddie could have the earnings power to provide taxpayers with enough value to repay Treasury's net cash investments in the two entities."
- Upon information and belief, in June 2012, Treasury memorialized in an email that "the [Companies] will be generating large revenues over the coming years, thereby enabling them to pay the 10% annual dividend well into the future even with the caps" on Treasury's commitment. According to the email, this point was apparently discussed between then-Treasury Secretary Timothy Geithner and Mr. DeMarco at a June 24, 2012, meeting.

- On July 13, 2012, Agency officials circulated meeting minutes noting that Fannie Mae's Chief Financial Officer had stated at an executive-management meeting four days before that the next eight years would likely be the "golden years of [Company] earnings," that "[c]urrent projections show that cumulative [Company] dividends paid will surpass cumulative [Company] Treasury draws by 2020," and that "[c]umulative 2012-2016 income is now forecast at $56.6 billion, $12.3 billion higher than the last projection."
- In a July 30, 2012, "PSPA Covenant and Timing Proposal" regarding the Sweep Amendment, Treasury acknowledged the "[Companies] will report very strong earnings on August 7, that will be in-excess of the 10% dividend to be paid to Treasury."
- At a meeting between senior Treasury officials and Fannie Mae on August 9, 2012, financial projections were introduced showing that, at no time between 2013 and 2022 would there be less than $116.1 billion of remaining funding available to Fannie Mae, or less than $148.3 billion available to Freddie Mac, under the Treasury SPAs. Furthermore, the projections showed that, even if the 10% dividends remained in place, dividends paid to Treasury would exceed cumulative draws under the Treasury SPAs as of 2020 in the case of Fannie Mae, and as of 2019 in the case of Freddie Mac.
- At the same meeting on August 9, 2012, just days before the Sweep Amendment was implemented, Fannie Mae's Chief Financial Officer, Susan McFarland, told Treasury officials that release of the valuation allowance on the deferred tax assets would likely occur in mid-2013 and would generate profits in the range of

$50 billion.

54. These encouraging projections were well founded. On May 9, 2012, Fannie Mae announced a net worth of $268 million and comprehensive income of $3.1 billion for the quarter ending March 31, 2012, and announced that it would not request a draw from Treasury for the first time since being placed into conservatorship. Similarly, Freddie Mac on August 7, 2012, reported a net worth of $1.1 billion for the quarter ending June 30, 2012, and announced that it too would not request a Treasury draw. Thereafter, on August 8, 2012, Fannie Mae announced net income of $5.1 billion for the second quarter of 2012, more than sufficient to pay its $2.9 billion quarterly dividend to Treasury, and announced, “we expect our financial results in 2012 to be substantially better than the past few years.”

55. The Companies also had sizeable deferred tax assets in 2012: Fannie Mae disclosed $64.1 billion on February 29, 2012, and Freddie Mac disclosed $34.7 billion on August 7, 2012. The Companies’ renewed profitability suggested that they would soon recognize these massive assets.

Treasury Through the Sweep Amendment Effectively Nationalizes the Companies and Appropriates Appaloosa’s Preferred Stock

56. Given the long history of assurances provided by the Agency and others, Appaloosa was shocked when, on August 17, 2012—nearly three years after Treasury’s emergency authority to purchase the Companies’ stock had expired and the Treasury SPAs had last been amended, but only days after the Companies’ highly favorable second-quarter results had been announced—Treasury and the Agency (acting as purported conservator for the Companies) entered into the Sweep Amendment. It transformed the Companies’ 10% dividend into a “dividend” of the “total assets of the Company . . . less the total liabilities of the Company” (subject to a capital reserve that diminished over time, initially set to be zero as

of January 1, 2018, but reset to a nominal $3 billion in December 2017). The Sweep Amendment has no termination date. In brief, it requires each of the Companies to turn over its entire net worth to Treasury—every quarter, in perpetuity.

57. Treasury thereby appropriated to itself all future profits of the Companies, effectively nationalizing them. Correspondingly, Treasury kept the Companies from accumulating capital that could ensure their ongoing solvency and ability to operate as private, rehabilitated companies without depending on the government; from having any funds to pay dividends to any other stockholders; and, except in limited circumstances, from being able to pay down the balance on the commitment (the net-worth payments do not reduce this balance) so as to substantially decrease Treasury's liquidation preference over the Junior Preferred and common stockholders.

58. The effect was to extinguish any possibility that any shareholder other than the United States will receive any value from the Companies. The government's action also, while not benefitting but actually harming the Companies, provided Treasury an expected and actual windfall of billions of dollars per year without the need for any appropriation from Congress. And it placed the burden of a public program, designed and intended to benefit the government's purposes, disproportionately upon the relatively small group of shareholders who invested and believed in the Companies' prospects, including Junior Preferred Stockholders, rather than upon the public as a whole.

59. It turns out that, during much of the period that the Agency was assuring Junior Preferred Shareholders that its objective was to stabilize the Companies and terminate the conservatorship, Treasury had quietly been seeking a way to wind-down the Companies, which came to include seeking a way to seize all of their value notwithstanding that its

emergency stock-purchasing authority had expired. An internal memorandum to Treasury Secretary Geithner from the then-Under Secretary of the Treasury for Domestic Finance, Jeffrey Goldstein, dated December 20, 2010, referred to a "commitment" by the Obama Administration to "ensure existing common equity holders *will not have access to any positive earnings from the [Companies] in the future*." (Emphasis added.) And in February 2011 Treasury issued a report expressing its intention to "us[e] a combination of policy levers to wind down Fannie Mae and Freddie Mac," claiming that the Administration would "work with [FHFA]" to this end—all while Mr. DeMarco continued throughout 2011 to assure Congress and the public that his goal was to *rehabilitate* the Companies. At the same time, Treasury stated its belief that, under the current Treasury SPAs, "there is sufficient funding to ensure the orderly and deliberate wind down of Fannie Mae and Freddie Mac, as described in our plan."

60. According to a senior Treasury official, Jeffrey Foster, the idea for a variable dividend payment based on positive net worth originated from a phone conversation between himself and Mario Ugoletti in 2010. Mr. Ugoletti had been appointed in 2009 as a special advisor to the Agency's Acting Director, and served as primary liaison to Treasury with respect to the Treasury SPAs and the amendments thereto. Before 2009, Mr. Ugoletti worked at Treasury for 14 years, from 1995 to 2009, serving as Director of the Office of Financial Institutions Policy during the last five years of his tenure. In that capacity, he participated, on behalf of Treasury, in creating and implementing the Treasury SPAs.

61. Mr. Foster testified that, during the phone call in 2010, he suggested to Mr. Ugoletti that the Treasury SPAs needed to be restructured to avoid the circularity of drawing from Treasury to then pay Treasury (the so-called "death spiral"). This conclusion was

supposedly based upon financial modeling work that Treasury itself had commissioned from Grant Thornton.

62. Mr. Foster found a receptive audience in the 14-year veteran of Treasury. Mr. Ugoletti has testified to his understanding that Treasury "all along" wanted to see a wind-down of the Companies and a new housing finance structure. In his position as special advisor to the Agency's Acting Director on the Treasury SPAs and the amendments thereto, he was in an ideal position to push Treasury's agenda.

63. In addition to his clear understanding of the wind-down objectives of his prior longtime employer, Mr. Ugoletti also understood that Treasury had the ability to control the Agency and dictate whether the Companies would ever emerge from conservatorship. As he explained in deposition, even if the Companies had been able to raise $189.5 billion in equity to pay off Treasury's liquidation preference and become sufficiently well capitalized to get the Agency's "stamp of approval on them," "Treasury still has to approve [the Companies'] coming out of conservatorship." As noted, the Treasury SPAs had given Treasury the right to block certain actions of the Agency as conservator in operating the Companies.

64. Treasury had used that power over the conservatorships to place the general interest of the government's coffers—beyond Treasury's interest in repayment of draws and in receiving dividends—ahead of the interests of shareholders and to hamper the Agency as conservator in preserving the value of the Companies for any shareholders other than Treasury. For example, in September 2009, the Companies had proposed to sell to third-party investors their investments in low-income-housing tax credits, to decrease their draws and dividend payments to Treasury. Treasury withheld its approval, explaining that "the proposed sale would result in *a loss of aggregate tax revenues* that would be greater than the *savings to*

the federal government from a reduction in the capital contribution obligations of Treasury" to the Companies under the Treasury SPAs.

65. Armed with its power to prevent the Agency from allowing the Companies to emerge from the conservatorships, Treasury sought to exert its influence upon the Agency's senior officials to adopt Treasury's bleak vision for the Companies and their shareholders. Upon information and belief, on January 4, 2012, Mary Miller of Treasury transmitted an agenda to Acting Director DeMarco claiming that Treasury and the Agency had "common goals" to "promote a strong housing market recovery, reduce government involvement in the housing market over time and to provide the public and financial markets with a clear *plan to wind down the [Companies]*." (Emphasis added.) One section of this agenda was titled, "Establish meaningful policies that demonstrate *a commitment to winding down the [Companies]*." (Emphasis added.)

66. As the financial condition of the Companies continued to improve dramatically, and the need for the Companies to remain in conservatorship diminished, the efforts of Treasury to implement the Sweep Amendment intensified. On June 13, 2012, Treasury prepared a "sensitive" and "pre-decisional" presentation, which stated that "Treasury would like to modify the [Treasury] SPAs given the challenges and circularity embedded in the current structure." In support of its modification proposal, which essentially mirrored the eventual Sweep Amendment, Treasury offered forecasts prepared by its own consultant, Grant Thornton, which showed a "base case" and a "downside case" that did not properly reflect the performance and prospects of the Companies. For example, under the base cases for Fannie Mae and Freddie Mac, the forecasts (made in June 2012) assumed, for 2012, a combined net comprehensive loss of $6.4 billion—even though their combined net comprehensive income

of $4.9 billion for the first quarter alone exceeded that figure. Indeed, for full year 2012, the Companies reported positive comprehensive income of $34.8 billion—a combined difference of $41.2 billion between the assumptions used by Grant Thornton and actual results. For 2013, the differences were even larger—the base cases projected combined net comprehensive positive income of $14.9 billion for the Companies, whereas their combined actual comprehensive income, excluding any deferred tax assets, was $64.5 billion, more than 425% higher than projected.

67. The need for Treasury to implement the Sweep Amendment took on even greater urgency following the meeting on August 9, 2012, attended by representatives of Treasury and Fannie Mae, at which Ms. McFarland advised Treasury officials that Fannie Mae would deliver sustainable profits over time and benefit from the likely near-term allowance of the deferred tax assets. The promising news conveyed at that meeting did not cause Treasury to reconsider its proposal to implement the Sweep Amendment. To the contrary, the same day as that meeting, Mr. Ugoletti emailed Mr. DeMarco and other Agency officials, advising them that, "[a]s a heads up, there appears to be a renewed push to move forward on [Treasury] SPA amendments." Mr. Ugoletti advised his Agency colleagues that he had not seen the proposed documents yet, but he understood that they were largely the same as previous versions he had reviewed, in terms of net income sweep, eliminating the commitment fee, and faster portfolio wind-down.

68. Treasury made the decision, on behalf of itself and the Agency, to cause the execution of the Sweep Amendment. This is evident from the fact that the Sweep Amendment was designed to promote Treasury's policy objectives. On information and belief, on August 13, 2012, just four days before the Sweep Amendment was executed, a draft

presentation was circulated among Treasury officials, indicating that the Sweep Amendment was "consistent with Treasury's policy to wind-down the [Companies]," and specifically intended to "ensure that the [Companies] will not be able to rebuild capital as they are wound down." Similarly, in an email between Treasury and White House officials on August 15, 2012, which did not copy the Agency or the Companies, Treasury official Adam Chepenik declared that, "[b]y taking all of their profits going forward, we are making clear that the [Companies] will ***not*** ever be allowed to return to profitable entities at the center of our housing finance system," and he confirmed that "taxpayers will receive every dollar of profit the [Companies] make." (Emphasis in original.)

69. While Treasury was pressing the Agency, through its liaison Mr. Ugoletti, to finalize the Sweep Amendments, neither Treasury nor the Agency apprised officials at the Companies about the existence of the Sweep Amendment, let alone invited them to discuss their own future. According to Mr. Ugoletti, representatives of the Companies received the near-final version of the Sweep Amendment not long before its execution and were "not too happy." Susan McFarland (who as Fannie Mae's Chief Financial Officer had met with Treasury on August 9, 2012) testified:

> So when the amendment went into place, part of my reaction was they did that in response to my communication of our forecasts and the implication of those forecasts, that it was probably a desire not to allow capital to build up within the enterprises and not to allow the enterprises to recapitalize themselves.

70. Had the Agency been acting as a conservator for the Companies, rather than as a federal regulator to implement Treasury's policy goals, the Agency would have had good reason to consult with the Companies' boards and management to determine whether the Sweep Amendment was or was not in the best interests of the Companies and their

shareholders. On information and belief, this never happened. This failure of the Agency to consult with the boards and management of the Companies for which it was purporting to act as conservator reinforces that the Agency was not acting as the conservator it had claimed it would be.

71. In short, Treasury orchestrated the Sweep Amendment, and the Agency was, to the extent it had any involvement, merely a federal agency acting at Treasury's direction, under its supervision, and for its purposes.

Treasury Boasts About Its Seizure of the Companies' Profits in Perpetuity

72. After imposing the Sweep Amendment, Treasury made no attempt to hide from the public that Treasury's purpose was to expropriate the entirety of the Companies' shareholders' private property rights for public use and a public purpose. In a press release the day it imposed the Sweep Amendment, Treasury announced that the so-called revised dividend would "replace the 10 percent dividend payments made to Treasury on its preferred stock investments in Fannie Mae and Freddie Mac with a quarterly sweep of every dollar of profit that each firm earns going forward," and "*make sure that every dollar of earnings each firm generates is used to benefit taxpayers*." (Emphasis added.) The press release further stated that the Sweep Amendment was a commitment that "*the [Companies] will be wound down and will not be allowed to retain profits, rebuild capital*, and return to the market in their prior form." (Emphasis added.)

73. Treasury did not indicate that, in entering into the Sweep Amendment, it had taken into consideration the need to maintain the Companies' status as private shareholder-owned companies. *See* § 1719(g)(1)(C)(v), § 1455(*l*)(1)(C)(v). Rather, its overriding concern was the government's own public interests.

74. Treasury made no effort in its press release to justify its authority for entering

into the Sweep Amendment in the face of the expiration—nearly three years before, with no purported amendments since—of its emergency purchasing authority. Nor did it attempt to justify its effective winding down of the Companies without putting them into receivership and providing shareholders the Recovery Act's protections in that event.

75. Furthermore, a White House senior advisor, in an email written to a senior Treasury official on the date of the Sweep Amendment, stated that "we've closed off [the] possibility that [Fannie and Freddie] ever[] go … private again," and forwarded an email expressing the advisor's view that the Sweep Amendment would "ensur[e] that [the Companies] can't recapitalize." The same White House advisor sent another email to Treasury officials that day characterizing the Sweep Amendment as a "policy," stating: "Team T[reasur]y, [y]ou guys did a remarkable job on the [Treasury] SPAs this week. You delivered *a policy change of enormous importance that's actually being recognized as such by the outside world* . . . , and as a credit to the Secretary and the President." (Emphasis added.)

76. These emails confirm that the Sweep Amendment emanated from the highest levels of the Administration, that it was intended to serve a perceived public policy with no regard for the conservation obligations of the Agency, and that the Administration recognized it was sharply diverging from the path that the government had drawn for the Companies and their investors.

In Executing the Sweep Amendment and Becoming a Mouthpiece for Treasury's Policy Objectives, the Agency Abrogated Its Public Commitments to Act as a "Conservator"

77. The Sweep Amendment did not make commercial or economic sense for the Companies (or their non-controlling shareholders), nor did the United States seriously claim otherwise. By contrast, the Sweep Amendment made a lot of sense for the United States Treasury, by expropriating valuable property belonging to Appaloosa for the benefit of the

United States and its coffers, while implementing policy objectives that Treasury had secretly long sought to achieve.

78. Thus, the Agency in "agreeing" to the Sweep Amendment had ceased to act in the best interests of the Companies and as the conservator that it had—repeatedly, for years—assured the markets that it would be, namely that it would act consistent with its "Powers as conservator" under the Recovery Act and with common, settled understandings of a conservator's role.

79. Thereafter, the Agency transformed itself into a mouthpiece for Treasury's policy objectives, which nakedly elevated the interests of "taxpayers" (*i.e.*, Treasury) over the interests of the Companies' soundness and solvency, let alone the Companies' stockholders other than the United States. Various documents and statements subsequent to the Sweep Amendment confirm the Agency's public switch to Treasury's position, notwithstanding Mr. DeMarco's reassurances to the market as recently as December 2011 that his duty as conservator was to rehabilitate the Companies. For example:

- On October 9, 2012, about two months after the Sweep Amendment, the Agency released its Strategic Plan for 2013-2017, which included the strategic goals of "minimiz[ing] taxpayer losses during the Enterprises' conservatorships" and "contract[ing] [Company] operations."
- On October 22, 2012, Timothy J. Mayopoulos, the President and CEO of Fannie Mae, stated that "[t]he [C]ompany is no longer run for the benefit of private shareholders."
- On March 20, 2013, the Agency's Office of Inspector General issued an Analysis of the Sweep Amendments in which it stated that, "[i]n overseeing the

Enterprises, FHFA has to balance its responsibilities for maintaining the viability of the Enterprises and for protecting the interests of taxpayers."

- In April 2013, Mr. DeMarco himself stated that "[t]he Administration has made clear that their preferred course of action is to wind down the [Companies]," and he explained that the "recent changes to the [Treasury SPAs], replacing the 10 percent dividend with a net worth sweep, reinforce the notion that *the [Companies] will not be building capital as a potential step to regaining their former corporate status*." (Emphasis added.)
- In May 2014, Agency Director Melvin L. Watt stated: "I don't lay awake at night worrying about what's fair to the shareholders." He added: "I just don't have time to think about what might happen in the future with the shareholders."

80. After lawsuits were filed challenging the Sweep Amendment, the Agency attempted to offer pre-textual justifications. In a declaration the Agency submitted in proceedings in the United States District Court for the District of Columbia, Mr. Ugoletti claimed that the Agency had agreed to the Sweep Amendment due to concerns that the burden of paying the 10% dividend owed to Treasury might reduce the amount of Treasury's commitment that remained available to the Companies. As noted above, however, Treasury knew that the Companies could pay the dividend "well into the future even with the caps," and projections available to both Treasury and the Agency indicated that the Companies would have more than sufficient funding through 2022. (As of the beginning of 2013, Freddie Mac had over $140 billion still available on its commitment from Treasury, and Fannie Mae had over $117.6 billion.) In fact, in an internal mark-up of a document explaining the reasoning for the sweep, a Treasury official wrote that the argument that the "10 percent

dividend was likely to be unstable as the businesses were reduced" "[d]oesn't hold water." Concerns that the 10% dividends were "circular" were unfounded for the additional reason that the dividends could be paid in-kind at a 12% rate, which would not require a further draw. Indeed, upon information and belief, a Treasury official involved in developing the Sweep Amendment was unable to identify any "problems of the circularity [in dividend payments that] would have remained had the [payment in kind] option been adopted," and internal Treasury documents recognized that, "[t]o the extent that required dividend payments exceed net income, FHFA, as conservator, could consider not declaring dividends pursuant to the certificates of designation for the preferred shares, so that draws on the [Treasury] SPAs are not used to pay dividends, preserving as much funding as possible to cover any unanticipated losses at Fannie Mae and Freddie Mac."

81. Rather than acting as a true conservator, or in the interests of the shareholders whose rights, titles, powers, and privileges with respect to the Companies it had assumed as conservator (§ 4617(b)(2)(A)), the Agency was acting under the de facto authority of, and in collusion, with Treasury.

82. Acting through Treasury—and in the face of Congress's assurance in § 4617(a)(7) that the Agency would *not* "be subject to the direction or supervision of any other agency of the United States" when "acting as conservator"—the United States by means of the Treasury SPAs, as well as through pressure and influence, came to exercise direction and control over the business and affairs of the Companies and caused the Agency to become hopelessly conflicted with respect to its obligations to the Companies and their shareholders, culminating with the Sweep Amendment.

83. In sum, the Agency abdicated its responsibility to act as conservator for the

Companies, and instead, acting in its capacity as regulator and an agency of the United States, acquiesced and succumbed to Treasury's mandate to execute the Sweep Amendment.

The United States' Windfall from the Sweep Amendment at the Companies' Expense

84. Treasury's actions to nationalize the Companies, stripping their shareholders (other than itself) of any benefit from the Companies' improving operations, proved well timed for the United States, in light of the Companies' results and market expectations as of August 2012.

85. In the first quarter of 2012, five months before the Sweep Amendment was announced, the Companies already had reported positive net income of over $3.2 billion and in the fourth quarter of 2012, the first quarter after Treasury imposed the Sweep Amendment, Fannie Mae reported pre-tax income of $7.6 billion. The quarter after that (first quarter of 2013), it reported $8.1 billion—the largest quarterly pre-tax income in the Company's history. In its 10-Q for the first quarter of 2013, Fannie Mae stated that it expected "our annual earnings to remain strong over the next few years" and "to remain profitable for the foreseeable future." For 2017, Fannie Mae reported pre-tax income of approximately $18 billion, and Freddie Mac reported pre-tax income of approximately $17 billion.

86. In addition, and as had been long and widely anticipated, Fannie Mae announced on May 9, 2013, that it would release the valuation allowance on its deferred tax assets, resulting in a benefit for its federal income taxes of $50.6 billion. This would have had the effect of increasing the Company's capital, which would have freed further assets to pay down the Treasury Senior Preferred Stock.

87. Under the Sweep Amendment, all of this went to Treasury. None went to ensuring the soundness and solvency of the Companies.

88. As shown in the below table, Fannie Mae and Freddie Mac have, as of the end of 2017, handed over to Treasury over $223 billion in "dividends" under the Sweep Amendment. (That is in addition to the $55.2 billion in dividends paid to Treasury between 2008 and 2012.)

Dividend Payments Under the Sweep Amendment (in Billions of Dollars)

	Fannie	**Freddie**	**Combined**
2013	82.5	47.6	130.1
2014	20.6	19.6	40.2
2015	10.3	5.5	15.8
2016	9.6	5.0	14.6
2017	12.0	10.9	22.9
Total	**135**	**88.6**	**223.6**

89. By contrast, had the Companies continued to pay only 10% cash dividends under the earlier (authorized) Treasury SPAs, they would have paid Treasury from 2013 through the end of 2017 a total of approximately $94.7 billion. Alternatively, if they had been permitted to repay principal during this period, they would have had sufficient quarterly profits in excess of the 10% dividend to *fully redeem* the Treasury Senior Preferred Stock and to rebuild capital. The amount paid to Treasury under the Sweep Amendment exceeds by billions of dollars the amount that Treasury provided to the Companies through its commitment under the Treasury SPAs. A February 15, 2018, Freddie Mac presentation on fourth quarter 2017 financial results reveals that Freddie Mac has paid a cumulative total of $112.4 billion in dividends to Treasury, while it had, as of December 31, 2017, only requested

$71.3 billion in draws. In fact, an August 16, 2012, "Sensitive and Pre-Decisional" "[Treasury SPA] Amendment Q&A" answered the question why the Companies could not use profits to buy back Senior Preferred Stock from Treasury by saying that "this would have reduced the amount taxpayers are reimbursed for their substantial contribution to support the [Companies]." This reveals the real intent behind the Sweep Amendment—to benefit the government at the expense of the Junior Preferred stockholders and common stockholders.

90. All told, had the Companies not entered into the Sweep Amendment, they would have retained at least $128.9 billion in capital, which they could have used to protect themselves from future downturns and reassure shareholders of the soundness of their investment. Moreover, if the Agency and Treasury were legitimately concerned about the Companies entering a "death spiral," they could have caused the Companies to elect to pay the dividend "in kind" by adding 12% annually to the liquidation preference of the Treasury Senior Preferred Stock. This would have had the effect of creating an additional $94.7 billion in capital, since cash that would have been paid as dividends would instead have been retained to increase the Companies' safety and soundness. Instead, the United States has forced the Companies to operate on the brink of insolvency (and suffer the attendant economic consequences, such as increased borrowing costs) and thus in perpetual dependency on the government. Meanwhile, the government pockets all of this money for its own purposes.

91. Moreover, because the Companies' dividend payments under the Sweep Amendment do not reduce the liquidation preference (and leave no other funds with which to do so), Treasury's massive liquidation preference under the Treasury SPAs, due to the Companies' having drawn on the commitment prior to 2012, is set in stone—as to Fannie Mae, $117.1 billion; and as to Freddie Mac, $72.3 billion, prior to December 31, 2017. Thus,

in addition to the over $223 billion that Treasury has already expropriated from the Companies, Treasury and the Agency contend that Treasury retains, forever, a further $189.5 billon liquidation preference. Thus, the diversion of profits under the Sweep Amendment also ensures the perpetual nullification of the liquidation rights of all other shareholders, particularly the Junior Preferred holders, who would be first in line but for Treasury's holdings.

The Sweep Amendment Took Appaloosa's Property Rights In And Under Its Junior Preferred Stock Certificates

92. Appaloosa purchased Junior Preferred Stock before the Sweep Amendment. Thus, at the time of the Sweep Amendment, it had vested property rights in the economic value of its Junior Preferred Stock, including the equity and market value of the Junior Preferred Stock, and the expectation of future dividend payments.

93. In addition, Appaloosa had vested contractual property rights in the Junior Preferred Stock. The Certificate of Designation for each series of Junior Preferred Stock issued by the Companies grants the holders rights to non-cumulative dividends to be declared at the discretion of the applicable Company's board of directors. For example, the Certificate of Designation for Fannie Mae's Series O Junior Preferred Stock provides:

> Holders of record of Series O Preferred Stock (each individually a "Holder", or collectively the "Holders") will be entitled to receive, when, as and if declared by the Board of Directors of Fannie Mae, or a duly authorized committee thereof, in its sole discretion out of funds legally available therefor, non-cumulative quarterly dividends which will accrue from and including the date of issuance and will be payable on March 31, June 30, September 30 and December 31 of each year (each, a "Dividend Payment Date"), commencing March 31, 2005.

94. The Certificates of Designation for each series of Junior Preferred Stock also provide for liquidation rights and preferences. For example, the Certificate of Designation for

Fannie Mae's Series O Junior Preferred Stock provides in part:

> (a) Upon any voluntary or involuntary dissolution, liquidation or winding up of Fannie Mae, after payment or provision for the liabilities of Fannie Mae and the expenses of such dissolution, liquidation or winding up, the Holders of outstanding shares of the Series O Preferred Stock will be entitled to receive out of the assets of Fannie Mae or proceeds thereof available for distribution to stockholders, before any payment or distribution of assets is made to holders of Fannie Mae's common stock (or any other stock of Fannie Mae ranking, as to the distribution of assets upon dissolution, liquidation or winding up of Fannie Mae, junior to the Series O Preferred Stock), the amount of $50 per share plus an amount, determined in accordance with Section 2 above, equal to the dividend (whether or not declared) for the then-current quarterly Dividend Period accrued to but excluding the date of such liquidation payment, but without accumulation of unpaid dividends on the Series O Preferred Stock for prior Dividend Periods.
>
> (b) If the assets of Fannie Mae available for distribution in such event are insufficient to pay in full the aggregate amount payable to Holders of Series O Preferred Stock and holders of all other classes or series of stock of Fannie Mae, if any, ranking, as to the distribution of assets upon dissolution, liquidation or winding up of Fannie Mae, on a parity with the Series O Preferred Stock, the assets will be distributed to the Holders of Series O Preferred Stock and holders of all such other stock pro rata, based on the full respective preferential amounts to which they are entitled (but without, in the case of any noncumulative preferred stock, accumulation of unpaid dividends for prior Dividend Periods).

Appaloosa Had Reasonable, Investment-Backed Expectations

95. Given the conditions of the market and the Companies, together with the assurances of the Agency in light of its powers as conservator under the Recovery Act (as well as the longstanding record of the Companies, and statements of the United States, before conservatorship), Appaloosa reasonably expected that the mortgage market would recover; that the Companies would return as bulwarks in housing; and that the Agency, having ensured the soundness and solvency of the Companies, accordingly would eventually be in a position to terminate their conservatorships. Moreover, Appaloosa reasonably believed that the

valuation allowance on the Companies' sizeable deferred tax assets would soon be released.

96. Appaloosa further expected that, in any event, the Agency would—as it had assured markets it would do, and as the Recovery Act reasonably indicated it should and would do—act with a view to rehabilitating the Companies and not as an accomplice to Treasury's carnivorous secret plan to seize, for itself, the entire value of the Companies in disregard of the property interests of Appaloosa and other shareholders.

97. As such, by early summer of 2012, Appaloosa reasonably anticipated that the Companies would eventually be in a position to emerge from conservatorship (as two Directors of the Agency had publicly predicted), from which they would be in a position to redeem the Treasury Senior Preferred Stock and allow Appaloosa to realize benefits from its reasonable investment-backed expectations in the property interests represented by the Junior Preferred Stock. Appaloosa, in any event, did not reasonably expect the Sweep Amendment or any other action that would make the conservatorship *antithetical* to those goals and in fact make them impossible to achieve.

98. Indeed, the terms of the Recovery Act's conservatorship provisions (among others) are materially identical to the longstanding ones in FIRREA by which the Federal Deposit Insurance Corporation ("FDIC") acts as conservator of troubled banks. *See* § 1821(d)(2)(D). Until the Sweep Amendment, this language had always been interpreted to mean that FDIC has a mandatory duty to preserve and protect the assets of banks when acting as conservator. Moreover, historically the United States' regulation of the Companies has been less extensive than its regulation of banks. Nor was Appaloosa aware of any prior use of a senior preferred stock instrument to strip 100% of a company's profits in perpetuity, to the derogation of the property rights of other holders of stock. Prior to the implementation of the

Sweep Amendment, the holders of Junior Preferred Stock could not have reasonably anticipated such a divergence from historical precedent.

99. The Sweep Amendment deprived Appaloosa of its economic and contractual property rights with respect to the Junior Preferred Stock. It made it impossible for Appaloosa to realize the future value of its property interests in the Companies.

100. One indication of this immediate, severe deprivation was the precipitous drop in the trading price of the Junior Preferred Stock in the over-the-counter market in the first two weeks alone following the enactment of the Sweep Amendment—indeed, by the end of August 2012, the trading price for the series of Junior Preferred Stock held by Appaloosa on the date of the Sweep Amendment had decreased by an average of over 61% since August 16. That drop, however, represents only the tip of the iceberg in measuring the true loss of value of the Junior Preferred Stock immediately before versus immediately after the Sweep Amendment. Immediately before the Sweep Amendment, the Junior Preferred Stock did not reflect information—known at Treasury, the Agency, and the Companies, but not to the public—regarding the financial condition of and prospects for the Companies. Had that information been publicly available, the trading price just prior to the Sweep Amendment would have been far higher, reflecting the true value of the Junior Preferred Stock. Conversely, the Sweep Amendment, by its terms, extinguished any existing market value for the Junior Preferred Stock by eliminating any possible investment return. Any remaining trading value was necessarily attributable to the possibility that litigation success could result in a return on the Junior Preferred Stock.

101. Appaloosa has been provided neither just compensation nor any compensation at all in return for the United States' taking of all the economic value associated with its

Junior Preferred Stock.

The United States, Which Controls the Companies, Has Through the Sweep Amendment Disproportionately Harmed Shareholders Other than the United States and, In Any Event, Has a Conflict of Interest With Respect to the Rights of the Companies

102. The United States, as the result of the Treasury SPAs as well as its conservatorships of the Companies via the Agency, was a shareholder that controlled the Companies prior to the Sweep Amendment.

103. The Sweep Amendment, in radically altering the Treasury SPAs, effectively created a new security for the United States. Treasury, in obtaining this result by means of its control of the Agency and the Companies did not, in exchange, provide to the Companies anything of the same value, but rather provided (at best) significantly lesser value. Further, Treasury's new rights to receive, every quarter in perpetuity, "dividends" equal to the entire net worth of the Companies increased its rights with respect to the Companies while correspondingly reducing the rights of all other shareholders.

104. In so doing, the United States engaged in self-dealing and breached its fiduciary duty arising from its control of the Companies.

105. As a result, any claim raised by Appaloosa that might be considered derivative on behalf of the Company is in fact direct, on behalf of Appaloosa itself.

CLAIMS FOR RELIEF

COUNT I
Just Compensation under the Fifth Amendment for the Taking of Private Property for Public Use

106. Appaloosa incorporates by reference and re-alleges each allegation set forth above, as though fully set forth herein.

107. The Fifth Amendment provides that no person shall "be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public

use, without just compensation."

108. Appaloosa had cognizable property interests in the Junior Preferred Stock, including in its contract rights to dividends, to liquidation rights and preferences, and to voting rights, and in its economic interests in the Junior Preferred Stock, including its proportionate share of the Company's future earnings and the equity and value of the Junior Preferred Stock.

109. Appaloosa had investment-backed expectations to participate in the Companies' future earnings and to receive a share of any residual value of the Companies in the event of liquidation, and those expectations were reasonable.

110. By way of the Sweep Amendment, executed under the purported authority of the Recovery Act and by one arm of the federal government (Treasury) imposing its will and dominion over another arm (the Agency) under its control, the United States directly appropriated for itself Appaloosa's property interests in the Junior Preferred Stock "to benefit taxpayers." The Sweep Amendment, although unlawful, was an authorized act of the government, done within the general scope of the duties of the agencies and officers who executed it.

111. The Sweep Amendment immediately diminished the value of Appaloosa's Junior Preferred Stock, repudiated Appaloosa's contractual property rights, and directly and proximately caused a severe, present, continuing and actual economic injury to the Junior Preferred Shareholders' property interests. Indeed, Appaloosa has been deprived of all economically beneficial uses of its Junior Preferred Stock in Fannie Mae and Freddie Mac, while the United States has received payments from the Companies of more than $200 billion in dividends since the Sweep Amendment, without any corresponding reduction in the

liquidation preference payable to the United States. Thus, contrary to the United States' position asserted in other litigation, Appaloosa's takings claim is clearly ripe.

112. Appaloosa is entitled to just compensation for the government's taking of its property.

COUNT II
Illegal Exaction in Violation of the Fifth Amendment

113. Appaloosa incorporates by reference and re-alleges each allegation set forth above, as though fully set forth herein.

114. Alternatively, the Sweep Amendment was imposed by the United States without authority. Under the Recovery Act, the Agency "as conservator" was to act to put the Companies "in a sound and solvent condition," to "preserve and conserve [their] assets," and to "carry on" their business. Contrary to these objectives, the Sweep Amendment ensures that the Companies will perpetually be on the verge of insolvency, wastes their assets, and destroys their ability to carry on their mandate as private, shareholder-owned companies. It does the opposite of conserving the Companies, and accomplishes a wind-down in contravention of the Act's separate provisions (and protections) for a receivership. Moreover, the Sweep Amendment was *ultra vires* on the part of Treasury as well, because it was executed contrary to the provisions of the Recovery Act (and the Companies' charters) granting Treasury only temporary emergency authority to purchase and determine the terms, conditions, and amounts of securities of the Companies.

115. Through the Sweep Amendment, the United States, in obtaining for itself a quarterly payment in perpetuity equal to the Companies' entire net worth, has appropriated to itself the property of Appaloosa, holder of Junior Preferred Stock. This appropriation was, in effect, a forced payment of money by Appaloosa to the government.

116. To the extent that the United States' violation of a "money mandating" statute is a necessary predicate for this Count, the Recovery Act is such a statute, particularly in the circumstances here, where the United States, in and as the result of assuming control of the Companies, assumed a fiduciary duty whose breach is appropriately remedied by damages.

117. The Sweep Amendment is thus an illegal exaction imposed in violation of the Due Process Clause of the Fifth Amendment.

118. Appaloosa is entitled to compensation for its illegally exacted property.

COUNT III
Breach of Fiduciary Duty

119. Appaloosa incorporates by reference and re-alleges each allegation set forth above, as though fully set forth herein.

120. As alleged above, the Treasury SPAs are contracts that gave the United States (via Treasury) control over the Companies and over the Agency as conservator of the Companies, which it exercised; moreover, the Agency as conservator under the Recovery Act controlled the Companies, succeeded to the rights of shareholders, and assumed the obligations of the then-existing contracts of the Companies. The United States thereby assumed fiduciary duties to Appaloosa and the other non-controlling shareholders, including (at a minimum) a duty not to manage the Companies for the United States' own pecuniary and policy interests at the expense of the interests of the shareholders other than the United States and not to engage in arbitrary or unreasonable conduct that would prevent non-controlling shareholders from benefitting from the fruit of their bargain with the Companies, such as in the Certificates of Designation of Appaloosa's Junior Preferred Stock and the implied-in-fact contract between the United States and the Companies.

121. The United States breached its fiduciary duty to Appaloosa by entering into the

Sweep Amendment, which was not in the best interests of the Companies' shareholders (other than the United States), but rather was contrary to their interests and arbitrarily and unreasonably provided a windfall to the United States at the expense of non-controlling shareholders. The Agency abdicated its responsibility to Treasury; and Treasury, by virtue of the Treasury SPAs, was conflicted. The Agency and Treasury acted together as a controlling group to implement their shared goal, the Sweep Amendment, in the interests of the United States rather than the best interests of the Companies and their shareholders, and thus in breach of their fiduciary duties to other shareholders including Appaloosa.

122. Appaloosa as a result suffered injury and loss of property, and is entitled to damages.

123. To the extent that rescission has been rendered impossible or impracticable, and because this Court may not grant that remedy, Appaloosa is entitled (without limitation) to rescissory damages.

124. According to Treasury, any fiduciary duties it owes to plaintiffs challenging the Sweep Amendment arise from a contract, such that a claim that it breached its fiduciary duty is in essence a contract action. This confirms that this Count is founded upon a contract with the United States.

COUNT IV
Breach of Implied-in-Fact Contract Between the United States and the Companies

125. Appaloosa incorporates by reference and re-alleges each allegation set forth above, as though fully set forth herein.

126. Prior to appointing itself conservator on September 6, 2008, the Agency unambiguously offered to place Fannie Mae and Freddie Mac into conservatorship by consent, under § 4617(a)(3)(I), with certain conditions described below, and the boards of

directors of the Companies accepted this offer. The Agency made no finding of insolvency, undercapitalization, or any other ground to impose conservatorship under § 4617(a)(3)(A)-(H) or (J)-(L).

127. The Agency offered, and the boards of Fannie Mae and Freddie Mac accepted, a conservatorship that would aim to "preserve and conserve the [Companies'] assets and property" and restore the Companies to a "sound and solvent condition." *See* § 4617(b)(2)(D). The offer was also of a conservatorship that would end when that goal was achieved. Neither of these conditions was ambiguous, and both would benefit the known and distinct class of the shareholders of the Companies, on whose behalf the boards of directors of the Companies had a fiduciary duty to act. In fact, the Agency obtained the boards' consent on the ground, in part, that conservatorship would serve the interests of the Companies' shareholders.

128. Underlying the Agency's offer was its promise that the Agency would not, as conservator, wind down or liquidate the Companies. The Agency stated contemporaneously with its offer that it could not, as conservator, place the Companies into liquidation. The Agency stated at the time, and for several years into the conservatorship, that its goal was instead to "restore the [Companies'] assets and property to a sound and solvent condition," which continued course of performance constitutes evidence of the offer's original terms.

129. When consenting to the conservatorship, the boards of the Companies furnished good and valuable consideration to the Agency by agreeing to forbear from a judicial or legislative challenge that the United States feared. *See* § 4617(a)(5). This forbearance was unambiguously furnished in exchange for the Agency's promises to act to restore the Companies to a safe and solvent condition.

130. The United States and the Companies, through the acts described above, entered into an implied-in-fact contract. The terms of that contract, as relevant here, were that the Agency if made conservator would "preserve and conserve the [Companies'] assets and property," that its conservatorship would continue only until the Companies were placed in a safe and solvent condition, and that, in exchange, the boards of the Companies would consent to, and not challenge or litigate, such a course of action. Both the Agency and the Companies intended that an implied contract would exist. That contract required the Agency to preserve the Companies' assets and property, and forbade it from diminishing or expropriating the Companies' assets and property. This intent was demonstrated through the offer and acceptance detailed above. The Agency's offer was not ambiguous in its terms, and the boards' acceptance was manifested in the Agency's subsequent imposition of conservatorship based on the boards' consent.

131. Under these terms of the implied-in-fact contract, and given the known fiduciary duty of the boards of directors of the Companies, the shareholders of the Companies were intended beneficiaries of the contract.

132. The Agency had actual authority, as an agency of the United States Government, to bind the United States.

133. The Sweep Agreement breached the contract by rendering it impossible for the Companies to build and retain the capital necessary to exit conservatorship and return to normal business operations.

134. Each subsequent Sweep Amendment payment independently breaches that contract by depleting the Companies of capital (rather than "preserv[ing] and conserv[ing]" it), in a manner that the Agency has expressly recognized undermines the goals of

conservatorship.

135. Had the United States adhered to the contract, it would have protected the rights of holders of stock (other than itself) in the Companies. Through the Sweep Amendment, however, the United States instead engaged in self-dealing, benefitting itself while harming the shareholders other than itself.

136. The Sweep Amendment, thus, directly harmed Appaloosa, by preventing the termination of the conservatorship; stripping the Companies of their ability to generate and retain funds to ever distribute as dividends to holders of the Junior Preferred Stock; and nullifying Appaloosa's contractual right, as holders of Junior Preferred Stock, to ever receive a liquidation preference upon the dissolution, liquidation, or winding up of the Companies. Appaloosa is accordingly entitled to damages.

PRAYER FOR RELIEF

WHEREFORE, Appaloosa seeks a judgment as follows:

A. Finding that the United States has taken or illegally exacted Appaloosa's private property in violation of the Takings or Due Process clauses of the Constitution;

B. Awarding Appaloosa just compensation under the Fifth Amendment for the United States' taking of its property;

C. Determining and awarding to Appaloosa the damages sustained by it as a result of the violations set forth above;

D. Awarding rescissory damages, based upon the breach of fiduciary duty that occurred;

E. Awarding to Appaloosa the costs and disbursements of this action, including reasonable attorneys' and experts' fees, costs and expenses; and

F. Granting such other and further relief as the Court deems just and proper.

Respectfully submitted:

May 10, 2018

By: *s/ Lawrence D. Rosenberg*

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Counsel for Plaintiffs

In The United States Court of Federal Claims

Cover Sheet

Plaintiff(s) or Petitioner(s)

Names: Appaloosa Investment Limited Partnership I, et al. (see attached list of Plaintiffs)

Location of Plaintiff(s)/Petitioner(s) (city/state): Short Hills, New Jersey and Cayman Islands

(If this is a multi-plaintiff case, pursuant to RCFC 20(a), please use a separate sheet to list additional plaintiffs.)

Name of the attorney of record (See RCFC 83.1(c)): Lawrence D. Rosenberg

Firm Name: Jones Day

Contact information for pro se plaintiff/petitioner or attorney of record:

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City-State-ZIP: Washington, DC 20001-2113

Telephone & Facsimile Numbers: (202) 879-7622

E-mail Address: ldrosenberg@jonesday.com

Is the attorney of record admitted to the Court of Federal Claims Bar? ■ Yes □ No

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Nature of Suit Code: 514

Select only one (three digit) nature-of-suit code from the attached sheet. See attached sheet for three-digit codes. If number 213 is used, please identify partnership or partnership group: __________

Agency Identification Code: TRE

Number of Claims Involved: 4

Amount Claimed: $ To Be Determined

Use estimate if specific amount is not pleaded.

Bid Protest:
Indicate approximate dollar amount of procurement at issue: $__________

Is plaintiff a small business? □ Yes □ No

Was this action preceded by the filing of a protest before the GAO? □ Yes □ No

If yes, was a decision on the merits rendered? □ Yes □ No

Takings Case:
Specify Location of Property (city/state): See Complaint

Vaccine Case:
Date of Vaccination: __________

Related Case:
Is this case directly related to any pending or previously filed case(s) in the United States Court of Federal Claims? If yes, you are required to file a separate notice of directly related case(s). See RCFC 40.2. ■ Yes □ No

UNITED STATES COURT OF FEDERAL CLAIMS

APPALOOSA INVESTMENT LIMITED PARTNERSHIP I; PALOMINO FUND LTD.; PALOMINO MASTER LTD.; AND AZTECA PARTNERS LLC, Plaintiffs, v. THE UNITED STATES OF AMERICA, Defendant.	Case No. 18-370C (Judge Sweeney)

LIST OF PLAINTIFFS

1. Appaloosa Investment Limited Partnership I
2. Palomino Fund LTD.
3. Palomino Master LTD.
4. Azteca Partners LLC

Respectfully submitted:

May 10, 2018

By: *s/Lawrence D. Rosenberg*

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Counsel of Record

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UNITED STATES COURT OF FEDERAL CLAIMS

APPALOOSA INVESTMENT LIMITED PARTNERSHIP I; PALOMINO FUND LTD.; PALOMINO MASTER LTD.; AND AZTECA PARTNERS LLC, Plaintiffs, v. THE UNITED STATES OF AMERICA, Defendant.	Case No. 18-370C (Judge Sweeney)

FIRST AMENDED CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 7.1 of the Rules of the United States Court of Federal Claims, the plaintiffs in this action state as follows:

Appaloosa Investment Limited Partnership I states that it does not have a parent corporation and no publicly held corporation owns 10% or more of its stock.

Palomino Fund Ltd. states that it does not have a parent corporation and no publicly held corporation owns 10% or more of its stock.

Palomino Master Ltd. states that it does not have a parent corporation and no publicly held corporation owns 10% or more of its stock.

Azteca Partners LLC states that it does not have a parent corporation and no publicly held corporation owns 10% or more of its stock.

Respectfully submitted:

May 10, 2018

By: *s/Lawrence D. Rosenberg*

Lawrence D. Rosenberg
Counsel of Record

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