IN THE UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

Joshua J. Angel
2 Park Avenue
New York, NY 10017
(917) 714-0409,

Plaintiff,

v.

The Federal Home Loan Mortgage Corporation, Christopher S. Lynch, Raphael W. Bostic, Carolyn H. Byrd, Lance F. Drummond, Thomas M. Goldstein, Richard C. Hartnack, Steven W. Kohlhagen, Donald H. Layton, Sara Mathew, Saiyid T. Naqvi, Nicolas P. Retsinas, Eugene B. Shanks, and Anthony A. Williams, and Federal National Mortgage Association, Egbert L.J. Perry, Amy E. Alvin, William T. Forrester, Brenda J. Gaines, Frederick B. Harvey III, Robert H. Herz, Timothy J. Mayopoulous, Diane C. Nordin, Jonathan Plutzik, and David H. Sidwell,

Defendants,

And

The Federal Housing Finance Agency as Conservator for The Federal Home Loan Mortgage Corporation and The Home Loan Mortgage Association,

Nominal Defendant.

COMPLAINT

Joshua J. Angel, ("Plaintiff") on behalf of himself as a Federal Home Loan Mortgage Corporation and Federal National Mortgage Association preferred stock shareowner ("Plaintiff"), by and through the undersigned counsel, submits this Complaint ("Complaint") against Federal Home Loan Mortgage Corporation ("Freddie Mac"), and its board of director

members as of August 17, 2012, Christopher S. Lynch, Raphael W. Bostic, Carolyn H. Byrd, Lance F. Drummond, Thomas M. Goldstein, Richard C. Hartnack, Steven W. Kohlhagen, Donald H. Layton, Sara Mathew, Saiyid T. Naqvi, Nicolas P. Retsinas, Eugene B. Shanks, and Anthony A. Williams, ("Freddie Mac Directors", or "Freddie Mac Director Defendants," and collectively with Freddie Mac, the "Freddie Mac Defendants"); and against the Federal National Mortgage Association ("Fannie Mae,"), and its board of director members as of August 17, 2012, Egbert L.J. Perry, Amy E. Alvin, William T. Forrester, Brenda J. Gaines, Frederick B. Harvey III, Robert H. Herz, Timothy J. Mayopoulous, Diane C. Nordin, Jonathan Plutzik, and David H. Sidwell ("Fannie Mae Directors", or "Fannie Mae Director Defendants" and with Fannie Mae the "Fannie Mae Defendants" and collectively with the Freddie Mac Defendants "Fannie/Freddie" the "GSEs", "Companies", "Directors", "Director Defendants" and "Defendants"). Plaintiff alleges the following based upon personal knowledge as to himself and his own acts and upon information and belief as to all other matters. Plaintiff's information and belief is based on, *inter alia*, documents and testimony in the public record (including certain documents produced by the government in a related case that have already been entered into the public record), as well as the investigation of Plaintiff.

NATURE AND SUMMARY OF THE ACTION

1. This action is brought by Plaintiff as holder of both Fannie Mae, and Freddie Mac preferred stock for damages incurred in connection with each of the Companies' entry, on August 17, 2012, into a third amendment of the September 6, 2008 senior preferred stock purchase agreement ("Senior Preferred", and "SPSPA", respectively) between Treasury, and the Federal Housing Finance Agency, conservator for Freddie Mac and Fannie Mae ("Conservator"), acting in name of, and on behalf of both Freddie Mac and Fannie Mae in advance of the

Conservator's appointment of a board of directors for each company ("Board(s)") to assist it in the Companies' management post conservatorship.

2. This action for money damages against the Defendants arises out of the Defendants' joint and several conduct, in breach of the contractual and fiduciary duties which they owed - and continue to owe in concert - to act in a manner consistent with the Conservator's obligations (A) to "preserve and conserve the assets and property" of the Companies in its management of the Companies, and (B) as HERA (defined below) endowed possessor of the plenary management "rights, titles, power and privileges" of Freddie Mac and Fannie/Freddie equity owners in general, and their junior in payment (*i.e.,* to Senior Preferred) preferred shareowners ("Junior Preferred Shareholders" and "Junior Preferred") in particular.

3. As set forth more fully below, on August 17, 2012, the Conservator, with rubber stamp approval of each Board, entered into a third amendment to the SPSPA (the "Third Amendment"), in per se anticipatory breach of each of the Defendant's joint and several contractual and fiduciary duties to the Plaintiff in particular, and their respective Junior Preferred equity owners in general.

4. Prior to the Third Amendment, the Senior Preferred stockholder (*i.e.,* Treasury) was entitled to "receive, ratably, when, as and if declared each of by the Fannie/Freddie Boards in its sole discretion . . ." cumulative cash dividends at the annual rate per share equal to the shares' then-current Dividend Rate (*i.e.,* ten percent).[1] The Third Amendment, redefined the "Dividend Rate" to "the amount, if any, by which the Net Worth Amount at the end of the immediately preceding fiscal quarter, less the then Applicable Capital Reserve Amount, exceeds zero." (the "Net Worth Sweep"). In other words, the Third Amendment provides for endless

[1] In the event, however, that a Company "failed to pay dividends in cash in a timely manner as required," the rate would increase to twelve percent (12%).

payment of a quarterly dividend to Treasury, equal to substantially all of each Company's net profits.

5. Defendants possessed not a single *bona fide* business reason for entering into the Third Amendment, without concurrently making certain of its fairness and legality with respect to, and in keeping with, their contractual and fiduciary obligations to Plaintiff. Recently produced documents make clear that the Federal Housing Finance Agency (hereinafter "FHFA Regulator" or "FHFA") and FHFA in its capacity of Conservator both fully understood that Third Amendment completely undermined the FHFA Regulator and Conservator statutory mandate "to preserve and conserve" Fannie/Freddie assets. As one administration member noted, "all investors" would soon understand that the Net Worth Sweep "should lay to rest permanently the idea that the outstanding privately held pref[erred shares] will ever get turned back on." [Emphasis Supplied]

6. The Third Amendment, however, did **not** relieve the Conservator, or the Defendants of their obligations to, *inter alia*, ensure that the Companies were not improperly stripped of their assets. In fact, under the Third Amendment, the Directors at all relevant times herein retained the power to declare Senior Preferred stock dividends in their "**sole discretion**". (Emphasis Supplied).[2]

7. Fannie Mae and Freddie Mac were both, at different times, chartered by the United States Congress (hereinafter collectively with Treasury, and other federal agencies, the "Federal Government").

[2] In fact, the Third Amendment expressly provides that "[f]or each Dividend Period from January 1, 2013, holders of outstanding shares of Senior Preferred Stock shall be entitled to receive, ratably, when, ***as and if declared by the Board of Directors, in its sole discretion***, out of funds legally available therefor, cumulative cash dividends in an amount equal to the then-current Dividend Amount." (Emphasis Added).

8. The Federal Government's guarantee of payment for the securities, and other financial obligations ("Financial Obligations"), of the GSEs was neither expressly assumed, or denied, as its implicit guaranty of payment over time became universally accepted for GSEs' debt and equity securities' full embrace. These instruments were "Government securities" within the general classification of Federal Government Financial Obligations issued with implicit Federal Government guaranty of payment (the "FG Implicit Guaranty").[3]

9. World financial markets and investor perception of the Federal Government's implicit guaranty of GSEs Financial Obligation payments arose over time through a combination of (a) their interpretation of various Federal Government agencies statutory as "Government Securities", and (b) the Federal Government's complicity in allowing, and not refuting, the general perception of Fannie/Freddie Financial Obligations enjoyment of a FG Implicit Guaranty of payment

10. The FG Implicit Guaranty of Fannie/Freddie Financial Obligations was critical to the GSEs' ability to market, and successfully sell, billions of dollars of Fannie/Freddie packaged guaranteed debt, and approximately $22 billion of their Junior Preferred shares as riskless perpetual capital suitable for financial institution tier one capital holding in the pre-conservatorship period of less than one year, from late 2007 through May 2008. Fannie Mae's ability to sell $4.8 billion of its Junior Preferred shares less than four months prior to the Company's September 6, 2008, entry into conservatorship, was the undoubted result of market acceptance and reliance on: (a) the FG Implicit Guaranty of Junior Preferred dividend, and principal payment; and (b) Federal Government promotion of the shares as essentially risk free Government Securities.

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[3] *See* "The 2008 Federal Intervention to Stabilize Fannie Mae and Freddie Mac," Federal Reserve Bank of Atlanta April 2009

11. In July 2008, James Lockhart, Director of the Office of Federal Housing Enterprise Oversight ("OFHEO"), certified both Fannie Mae and Freddie Mac as being "adequately capitalized." Following that OFHEO certification, the Fannie Mae Board on August 8, 2008, declared a third quarter $413 million dividend on its Junior Preferred shares, payable September 30, 2008 (the "August 2008 $413 million Declared Dividend").

12. On September 8, 2008, Director Lockhart appointed FHFA to serve as each of the Companies' Conservator, and announced cancellation of the Fannie Mae Junior Preferred August 2008 $413 million Declared Dividend's payment.

13. Director Lockhart's announced cancellation of the Fannie Mae August 2008 $413 million Declared Dividend, if not immediately rescinded, would in time result in the Federal Government's being declared in breach of its implicit guaranty of Fannie Mae Junior Preferred payments, with attendant demand for $34 billion of Fannie/Freddie preferred share principal payment, and the August 2008 $413 million Declared Dividend payments to follow.

14. On September 11, 2008, Treasury issued an announcement wherein it: (a) referenced the Junior Preferred shares FG Implicit Guaranty; and (b) retracted Director Lockhart's cancellation of the Fannie Mae August 2008 $413 million Declared Dividend with language as follows: *"Contracts are respected in this country as a fundamental part of rule of law", and "Dividends actually declared by a GSE before the date of the senior preferred stock purchase agreement [i.e., the August 2008 $413 million Declared Dividend] will be paid on schedule" ("Retraction").*

15. The Retraction, and Treasury mandate to the Conservator to direct Fannie Mae to pay its August 2008 $413 million Declared Dividend provides cogent evidentiary confirmation

of: (a) the Junior Preferred's enjoyment of the FG Implicit Guaranty of payment at August 2008, and (ii) the guaranty's continuance in place thereafter in undiminished vigor and validity.

16. Beginning on August 27, 2012, and continuous to date, Defendants breached their fiduciary and contractual duties to Plaintiff by acting in near mindless complicity as each of the Companies' Boards rubber-stamped adoption of the Third Amendment. The Conservator ("Nominal Defendant" herein) is manifestly conflicted from pursuing the Complaint against the Defendants by reason of its complicity in the orchestration of the Third Amendment's ratification and adoption, and the continuous Board directed performance in direct contravention of its HERA imposed fiduciary and contractual responsibilities. To the extent any of the breaches alleged hereunder are derivative of Conservator's plenary duties, a demand for such exercise would be futile given the Conservator's complicity in the acts complained of. Thus, Plaintiff brings this action, with the Conservator named as Nominal Defendant, as provided under HERA.

JURISDICTION AND VENUE

17. This Court has subject matter jurisdiction over this action pursuant to 12 U.S.C. §§ 1452, 1455, 1717, 1719, 1723a(a) and 4617, as well as 28 U.S.C. § 1331. In addition, this Court has subject matter jurisdiction under 28 U.S.C. § 1332(a) in that Plaintiff and Defendants are citizens of different states and the matter in controversy exceeds $75,000, exclusive of interest and costs. The Court also has subject matter jurisdiction over claims asserted herein pursuant to 28 U.S.C. § 1367.

18. Venue is proper in this district under 28 U.S.C. § 1391 because a substantial portion of the transactions and wrongs complained of including the Defendants primary participation in the wrongful conduct described and detailed herein occurred in this district, and

Defendants have engaged to numerous activities and conducted business here which had an effect in this district.

THE PARTIES

19. Plaintiff, a citizen of New York owns, and holds both Freddie Mac and Fannie Mae non-cumulative perpetual Junior Preferred stock.

20. Defendants Christopher S. Lynch, Raphael W. Bostic, Carolyn H. Byrd, Lance F. Drummond, Thomas M. Goldstein, Richard C. Hartnack, Steven W. Kohlhagen, Donald H. Layton, Sara Mathew, Saiyid T. Naqvi, Nicolas P. Retsinas, Eugene B. Shanks, and Anthony A. Williams were Freddie Mac corporate directors on August 17, 2012 with addresses unknown, other than care of Freddie Mac at 8200 Jones Branch Drive, McLean, Virginia 22102.

21. Defendant Freddie Mac is a federally chartered, privately owned company with its principal executive offices located at 8200 Jones Branch Drive, McLean, Virginia 22102.

22. Defendants Egbert L.J. Perry, Amy E. Alvin, William T. Forrester, Brenda J. Gaines, Frederick B. Harvey III, Robert H. Herz, Timothy J. Mayopoulos, Diane C. Nordin, Jonathan Plutzik, and David H Sidwell were Fannie Mae corporate directors on August 17, 2012 with addresses unknown, other than care of Fannie Mae at 3900 Wisconsin Avenue, NW (MS 1H 2S 05) Washington, DC 20016-2892.

23. Defendant Fannie Mae is a federally chartered, privately owned company with its principal executive offices located at 3900 Wisconsin Avenue, NW (MS 1H 2S 05), Washington, DC 20016-2892.

FACTS

A. THE COMPANIES

24. Fannie Mae, and Freddie Mac are stockholder-owned corporations organized at different time, and existing under the Federal Home Loan Mortgage Corporation Act. Freddie

Mac was created as an alternative to Fannie Mae to make the secondary mortgage market more competitive and efficient, and to increase mortgage market liquidity. The Companies seek to accomplish their mission by purchasing mortgages that private banks originate and bundle into mortgage-related securities to be sold to investors worldwide. Through the creation of this secondary mortgage market, the Companies increase liquidity for private banks, which thus enables them to make additional loans to individuals for home purchases.

25. Freddie Mac's bylaws designate the Virginia Stock Corporation Act (the "VSCA") as controlling for purposes of Freddie Mac's corporate governance practices and procedures to the extent not inconsistent with the Company's enabling legislation and other federal laws, rules and regulations. There is no federal corporate law applicable to Freddie Mac, or the corporate law issues this complain raises, other than Virginia law as so incorporated.

26. Fannie Mae's bylaws designate Delaware General Corporation Law (the "DGCL") as controlling for purposes of Fannie Mae's corporate governance practices and procedures to the extent not inconsistent with the Company's enabling legislation and other federal laws, rules and regulations. There is no federal corporate law applicable to Fannie Mae, or the corporate law issues this Complaint raises, other than Delaware law as so incorporated.

B. THE JUNIOR PREFERRED SHARES, AND THE FEDERAL GOVERNMENT'S IMPLICIT GUARANTY OF GSE FINANCIAL OBLIGATIONS

27. Before the imposition of the 2008 conservatorship, Fannie/Freddie, in the course of their operations as privately owned, for-profit entities, issued both common stock and preferred stock. Pre-conservatorship, each Company's Junior Preferred shares were federal regulatory agency accepted as "Government Securities" suitable for bank tier one capital holding (*i.e.*, risk free) investment. Before 2007, each company was consistently profitable, and prior to

that time, had never experienced an annual loss, and regularly declared and paid dividends on their Junior Preferred stock.

28. Despite the imposition of conservatorship in 2008, the Companies continued to have private preferred and common stockholders. The common stock holder ownership interest of each company was, however, effectively diluted by 79.9% in connection with the 2008 adoption of SPSPA financing, and Senior Preferred stock issuance.

29. In 2009, the GSEs, *sub silentio* were *de facto* nationalized by, *inter alia,* the Federal Government's imposition and non-reimbursement, over time, of nearly $60 billion of the Home Affordability Reference Program ("HARP") and the Home Affordable Modification Program ("HAMP") costs (the "2009 De facto Nationalization") on the Companies. As candidly acknowledged in deposition testimony by Timothy Geithner, formerly the United States Secretary of the Treasury, ongoing GSE public ownership was a government fiction, and the Companies were from their conservatorship start "effectively nationalized." With common shares of negligible value, in the first instance, attendant to SPSPA 79.9% *de facto* common share ownership dilution, and a share price in pennies, the Fannie/Freddie common shareholders had little incentive to challenge the Companies' nationalization in taking value contest. In time, speculators swooped in as buyers, perhaps to fight another day in obscene profit pursuit.

30. Under both Delaware, and Virginia law, a "Certificate of Designation" is deemed to be an amendment to a corporation's charter, and is therefore generally viewed as contractual in nature. In addition, the corporation, its directors and its officers owe fiduciary duties to preferred stockholders and to the corporate business entity.

31. Prior to the conservatorship, each series of Freddie Mac and Fannie Mae Junior Preferred stock ranked on a parity with all other issued and outstanding series of Junior Preferred

as to the payment of dividends and the distribution of assets upon dissolution (*i.e.*, liquidation). In other words, each series of Freddie Mac and Fannie Mae Junior Preferred stock carried equal liquidation preferences (or their respective pro rata portions thereof) upon dissolution, liquidation, or Company or windup (*i.e.*, liquidation).

32. Prior to the creation and issuance of the Senior Preferred, Freddie Mac and Fannie Mae regularly declared and paid dividends on each series of their respective its Junior Preferred stock.

33. The FG Implicit Guaranty of the GSEs' preferred shares was critical to the Companies being able to market and successfully sell approximately $22 billion of Junior Preferred shares as riskless Government Security perpetual capital in the period beginning late 2007 thru May 2008.

34. Fannie Mae's ability to sell $4.8 billion of its Junior Preferred shares — less than four months prior to the Company's entry into conservatorship on September 6, 2008 — was the undoubted result of the market's acceptance and reliance on federal regulator agency non-challenge, and seeming acquiescent acceptance of Fannie/Freddie Preferred Shares being Government Securities, payment protected by FG Implicit Guaranty.[4]

C. THE CANCELLATION AND REINSTATEMENT FOR PAYMENT OF FANNIE MAE JUNIOR PREFERRED "AUGUST 2008 $413 MILLION DECLARED DIVIDEND"

35. Beginning in 2007, a global financial crisis and nationwide declines in the housing market caused the GSEs to suffer significant losses. Despite those losses, the Companies remained adequately capitalized, and, as described by Director Lockhart, "safe and sound."

[4] The implicit Federal Government guaranty of GSE Financial Obligations is examined in detail in Plaintiff's February, 2016 study, entitled, Government Perfidy and Mismanagement of the GSEs In Conservatorship ("Perfidy") attached hereto as Exhibit "A".

36. In July 2008, Congress enacted the Housing and Economic Recovery Act of 2008 ("HERA"), and therein created the FHFA to replace OFHEO as the GSEs regulator. HERA, authorized FHFA to appoint an independent person, or FHFA itself, as the GSEs conservator, or receiver of the GSEs in statutorily specified circumstances. For reasons known only to itself, FHFA chose to appoint itself rather than an independent person as Fannie/Freddie Conservator.

37. The self-appointment of the FHFA Regulator as Fannie/Freddie Conservator independently added the traditional trustee fiduciary responsibilities of a conservator onto the FHFA in addition to, and separate and apart from, the Conservator's HERA mandated responsibilities.

38. HERA left in place the Companies' federal charters and the FG Implicit Guaranty of their Financial Obligations. HERA did not alter the provisions of the Companies respective bylaws implemented pursuant to federal law and, with regard to Freddie Mac, that Virginia law apply for Freddie Mac corporate governance purposes. HERA also did not abrogate the basic contractual and fiduciary duties owed by the Conservator, and the Defendants, to holders of Freddie Mac and Fannie Mae financial obligations in similar scope under federal and state insolvency laws.

39. HERA was passed, not because Fannie/Freddie were deemed to be then insolvent, or operating unsafely, but rather to provide the struggling mortgage and financial markets with added confidence in the GSEs improved liquidity. Less than two months after HERA's passage, and Director Lockhart's public declaration of the GSEs being adequately capitalized, the companies were placed under FHFA-directed conservatorship, as the FHFA Regulator appointed itself as GSEs Conservator, and announced as its goal the return of the GSEs to normal business operations.

40. When the FHFA Regulator's self-appointment as Conservator was announced, the FHFA Regulator and Conservator jointly announced a goal to return the GSEs to normal business operations, which once restored to a safe and solvent condition would be terminate the conservatorship.

41. That announcement was consistent with the HERA mandate for the Conservator once named to "take such actions as may be":

> (i) necessary to **put the regulated entity in a sound and solvent condition**; and
>
> (ii) appropriate to **carry on the business of the regulated entity and preserve and conserve the assets and property of the regulated entity**.

(Emphasis Supplied).

42. At no time did that express HERA mandate, for the FHFA Regulator and Conservator to "preserve and conserve" the GSEs' assets, change. In a deposition taken under oath on May 7, 2015, Edward DeMarco, Director of the FHFA Regulator, and as and the GSEs Conservator testified that:

> My commitment was to ensure that the conservatorship carried out its function and responsibility so these two companies were **capable of continuing to operate in a sound and solvent condition** so the United States of America had a functioning secondary mortgage market . . . (Emphasis Supplied).
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> ***
>
> It was important to me to **keep these companies functioning in a sound and solvent way**. . . (Emphasis Supplied).

43. On September 6, 2008, FHFA placed the Companies into conservatorship and the next day, FHFA Director Lockhart said:

> *"...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. Subordinated debt interest and principal payments will continue to be made."

44. Director Lockhart's cancellation of the August 2008 $413 million Declared Dividend, if not immediately retracted and rescinded, would in time result in the Federal Government being declared in breach of its implicit guaranty of GSEs Junior Preferred capital payments, and likely near concurrent demand for $34 billion of par principal, and $413 million of Dividend payments.

45. Despite entering into Conservatorship, the Fannie/Freddie Boards retained (or were empowered with) certain duties and obligations, and although HERA empowered FHFA to place Fannie/Freddie into conservatorship, and assume direct plenary management as Conservator, HERA left in place the Companies' federal charters, and did not otherwise alter the provisions of bylaws, implemented pursuant to federal law, as they continued to have private preferred and common stockholders.

46. As Secretary Paulson himself noted, the entry into conservatorship did **not** eliminate the outstanding Junior Preferred shares. To wit:

> Similarly, conservatorship does not eliminate the outstanding preferred stock, but does place preferred shareholders second, after the common shareholders, in absorbing losses.

47. Similarly, HERA did not change the fact that VSCA would apply to Freddie Mac in its corporate governance.

48. Pursuant to its powers under HERA, the Conservator reconstituted Freddie Mac and Fannie Mae's respective Board, as it concurrently delegated certain day to day plenary authority such as share dividend declaration back to the Board.

49. In appointing directors to the Freddie Mac Board, the Conservator made clear that while the Directors' remained responsible for carrying out normal board functions, they were

required to, *inter alia*, obtain FHFA's review and approval before taking action in certain areas, including, *inter alia,* the "declaration or payment of dividends or any other distribution" to the Company's shareholders, with distinction only with regard to priority in payment, and otherwise in pari par su contractual and fiduciary entitlement.

50. The Defendants' continuing powers and obligations in Fannie Mae's day to day business operations have been well accepted in that Company's ten year conservatorship. For example, on February 18, 2016, Fannie Mae stated that it "continue[s] to operate as [a] business corporation[] with [a] board[] of directors subject to corporate governance standards stating that its board of directors was responsible - like boards of directors at other companies - for overseeing its business activities; and "effectively running the company".

51. HERA, *however, did not provide license to either the FHFA Regulator, the Conservator, or the Freddie Mac or Fannie Mae Boards to disregard direct non-operational corporate governance, contractual, and fiduciary obligations owed to Freddie Mac and Fannie Mae's respective shareholders under VSCA law, and the Companies' preferred share Certificates of Designations.*

52. Moreover, both Fannie Mae and Freddie Mac post conservatorship adopted Codes of Conduct and Conflicts of Interest Policies ("Code of Conduct") for the members of their respective Boards of Directors providing, in pertinent part:

> A. **Conflicts of Interest**
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> ***
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> 3. Directors must not engage in any conduct or activity that is inconsistent with the Corporation's best interests, as defined by the Conservator's express directions, its policies and applicable federal law, or that disrupts or impairs the Corporation's relationship with any person or entity with which the Corporation has or proposes to enter into a business or contractual relationship.

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D. **Fair Dealing**

Directors should endeavor to deal fairly with the Corporation's customers, suppliers, competitors and employees. Directors should not take unfair advantage of anyone through manipulation, concealment, abuse or privileged information, misrepresentation of material facts or any other unfair-dealing practice.

E. **Protection and proper use of Corporation assets**

Directors shall oversee the protection of the Corporation's assets and their efficient use. The Corporation's assets include not only tangible items but also intellectual property (such as ideas, inventions, trade secrets, copyrighted material and trademarked materials). Theft, carelessness and waste have a direct negative impact on the Corporation's interests. Corporation assets should be used for legitimate business purposes.

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F. **Compliance with laws, rules and regulations**

Directors shall comply, and oversee compliance by employees, officers and other directors, with laws, rules and regulations applicable to the Corporation. The Corporation is a Government-Sponsored Enterprise and, thus, is subject to special statutory and regulatory provisions. In addition, for as long as the Corporation remains under the Conservatorship, the Corporation shall be subject to the directions and policies of the Conservator and to certain statutory and regulatory provisions applicable to the Conservatorship. These provisions, directions and policies encompass interactions between the Corporation's directors, officers and employees and the Conservator and any other governmental entities, congressional staff or regulatory personnel of entities with jurisdiction over any aspect of the Corporations' business.

53. Simply put, the Conservator and Defendants owed (and continue to owe) certain fiduciary obligations to the Companies' equity owners despite the Companies having been placed into conservatorship. Serving two masters (*i.e.,* Conservator, and equity owners), Defendants needed to comport themselves in accordance with (a) the Federal Government rules, regulations and statutes applicable to the conservatorship — including the mandate under HERA Section 4617(b)(2)(D) to put the Companies in "a sound and solvent condition", "carry on the business" of the Companies, and "preserve and conserve their assets and property"; while at the

same time serving in strict compliance with the Code of Conduct, and (b) VSCA mandated practices and procedures for its corporate citizens to the extent not inconsistent with the HERA enabling legislation, and other federal rules, regulations, and statutory laws.

D. FANNIE/FREDDIE SENIOR PREFERRED STOCK

54. The day after the GSEs were placed into conservatorship, Treasury exercised its temporary authority under HERA and entered into nearly identical SPSPAs with each of them. The SPSPAs provided for Treasury to purchase a newly created series of preferred shares (the "Senior Preferred") with a then agreed to 10% dividend coupon.

55. *The SPSPA required Freddie Mac and Fannie Mae to obtain Treasury permission before declaring and paying dividends on its junior preferred shares. It did not, however, otherwise eliminate the Companies' governance and contractual obligations with regard to such payment. In return for Treasury's commitment to purchase $100 billion of Freddie Mac and Fannie Mae Senior Preferred Stock, Treasury received $1 billion of Senior Preferred Stock in each of the Companies together with warrants to acquire 79.9% of each Company's common stock at a nominal price in ownership by warrant effective dilution. Treasury also established a $100 billion lending facility for each Company, later increased by two subsequent SPSPA amendments to $200 billion.*

56. *Notably, the SPSPA required the Directors of the Companies to apply their own discretion before declaring, and paying dividends on, Senior Preferred Stock. In fact, the Certificate of Designation of Terms Variable Liquidation Preference Senior Preferred Stock, Series 2008-2 (the "Senior Preferred Stock Certificate") expressly provides that a dividend and/or distribution will only be issued "when, as, and if declared by the Board of Directors in its sole discretion".*

57. Neither the SPSPA nor the Senior Preferred Certificate of Designation otherwise eliminate or materially alter the Defendants governance and contractual duties under federal or state law, or their generally accepted definition as being federal government Financial Obligations.

58. Among other things, Defendants knew prior to August 17, 2012 - upon information and belief - that many of FHFA's early write-downs, including valuation allowances for deferred tax assets, would soon be reversed as the GSEs were inexorably about to generate massive profits.

59. Fannie Mae's former chief financial officer, Susan McFarland, told officials at the Treasury on or about August 9, 2012, that the company was "now in a sustainable profitability, that we would be able to deliver sustainable profits over time."

60. Ms. McFarland's words were prescient. As both, Fannie Mae and Freddie Mac began to experience a vigorous recovery, in their profitability, earning profits of $7.8 billion and $3.5 billion, respectively, in the first half of 2012 alone.

61. Upon information and belief, Defendants knew prior to August 17, 2012, that GSEs massive profits would require the resumption of good faith Board decisions with regard to dividend declaration, and payment.

62. With Fannie/Freddie both having returned to huge profitability, the public had reason to believe that the Companies would eventually be healthy enough to require a good faith return "to normal business operations," as (i) the FHFA Regulator and Conservator had vowed when the conservatorships were established. Unfortunately, the Federal Government, on or about July 2012 determined to indulge itself on the Companies' profit recovery, by, *inter alia,* over time converting, $10 billion of Junior Preferred dividend entitlement payments to Treasury.

To achieve the conversion Treasury, the FHFA Regulator and the Conservator combined in a Federal Government Third Amendment feeding frenzy and directed Defendants' near mindless acquiescence in accepting and amending Fannie/Freddie Senior Preferred Certificates of Designation "Dividend Amount". The Third Amendment language ensured that Treasury would thereafter receive the entire positive net worth of each of the Companies' quarter by quarter in perpetuity (*i.e.*, the Net Worth Sweep).

63. GSEs Senior Preferred corresponding Certificates of Designation were then amended, in pertinent part, as follows:

> . . . For each Dividend Period from January 1, 2013, holders of outstanding shares of Senior Preferred Stock shall be entitled to receive, ratably, when, as and if declared by the Board of Directors, in its sole discretion, out of funds legally available therefor, ***cumulative*** cash dividends in an amount equal to the then-current Dividend Amount.
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> * * *
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> For each Dividend Period from January 1, 2013, through- and including December 31, 2017, the "Dividend Amount" for a Dividend Period means the amount, if any, by which the Net Worth Amount at the end- of the immediately preceding fiscal quarter, less the Applicable Capital Reserve Amount, exceeds zero. ***For each Dividend Period from January 1, 2018,-the "Dividend Amount" for a Dividend Period means the amount, if any, by which the Net Worth Amount at the end of the immediately preceding fiscal quarter exceeds zero.*** In each case, "Net Worth Amount" means (i) the total assets of the Company (such assets excluding the Commitment and any unfunded amounts thereof)-as reflected on the balance sheet of the Company as of the applicable date set forth in this Certificate, prepared in accordance with GAAP, less (ii) the total liabilities of the Company (such liabilities excluding any obligation in respect of any capital stock of -the Company, including this Certificate), as reflected on the -balance sheet of the Company as of the applicable date set forth in this Certificate, prepared in accordance with GAAP. "Applicable Capital Reserve Amount" means, as of any date of determination, for each Dividend Period from January 1, 2013, through and including December 31, 2013, $3,000,000,000; and for each Dividend Period occurring within each 12-month period thereafter,

> $3,000,000,000 reduced by an equal amount for each such 12-month period through and including December 31, 2017, so that for each Dividend Period from January 1, 2018, the Applicable Capital Reserve Amount shall be zero. For the avoidance of doubt, if the calculation of the Dividend Amount for a Dividend Period does not exceed zero, then no Dividend Amount shall accrue or be payable for such Dividend Period.

(Emphasis Supplied).

64. No consideration was paid to Freddie Mac or its Junior Preferred Shareholders in exchange for the Third Amendment Net Worth sweep. As set forth above, the Third Amendment required the GSEs pay Treasury a purported "dividend" equal to the Company's "Net Worth Amount" (*i.e.*, total assets less total liabilities) less the then "Applicable Capital Reserve Amount" (*i.e.*, $3 billion at September 2008 and decreasing to $0 by December 31, 2017).

65. The Conservator directed, Defendants agreed to, and Auditor ratified, the continued placement on Fannie/Freddie certified balance sheets, of the Applicable Capital Reserve Amount below, both Senior Preferred, and Junior Preferred on both Companies' post conservatorship balance sheets. That placement is strongly evident of (a) the FG Implicit Guaranty of Junior Preferred share payments extent; and ongoing validity, and (b) the Junior Preferred as permanent capital entitled to 100% par repayment in either GSE liquidation, or restoration post conservatorship and (c) Junior Preferred shares' liquidation value of 100%.

66. Beginning January 1, 2013 and continuing in perpetuity, the Net Worth Amount would - with Defendants' approval - be paid out each quarter to Treasury without any capital reserve buffer whatsoever.

67. Net Worth Sweep "dividends" are cumulative, and thus, if the Net Worth Amount is greater than zero, and the Boards do not declare a "dividend" on the Senior Preferred stock, the "dividend" then accumulates.

68. Under Senior Preferred Certificates of Designation, no dividends may ever be paid on any other classes or series of stock of the Companies unless and until full cumulative "dividends" (*i.e.*, the full Net Worth Sweep amount) are paid on the Senior Preferred stock pursuant to the Net Worth Sweep. With the entire net worth of the Companies payable in perpetuity to the Senior Preferred Stock, and the Applicable Capital Reserve Amount scheduled to reduce to $0 on December 31, 2017 there would, (as history has confirmed), be no remaining assets from which dividends could ever be paid on Plaintiff's Fannie/Freddie Junior Preferred shares.

E. THE NET WORTH SWEEP

69. Both Fannie Mae and Freddie Mac returned to profitability in 2012. That year, Freddie Mac for example earned $11 billion in profits inclusive of $1.5 billion of restored deferred income tax benefits. Both Companies with aggressive accounting loss reserve reversals became even more profitable in 2013 ($51.6 billion inclusive of $23.3 billion or restored deferred income tax benefits), and they have remained consistently, and enormously profitable to date thereafter.

70. An August 17, 2012 email exchange among Treasury/Obama Administration officials Jim Parrott, Timothy Bowler, Mary Miller, Robert Miller, Mary Goodman, Frederic Ryser, Daniel Gish, Randy Masel, Simon Park, Eugene Burger, Richard Labriola, and Dylan Minert made concurrently with Treasury's Net Worth Sweep announcement is in *prima facie* evidence of the Treasury Conservator's, FHFA Regulator's, bad faith in directing the Defendants' Third Amendment's adoption as follows: "The principle of 'full income sweep of all future earnings to benefit taxpayers' should lay to rest permanently the idea that the outstanding privately held pref. will ever get turned back on". [Emphasis Supplied].

71. Having, as Secretary Geithner admitted under oath, "effectively nationalized the GSEs" from the conservatorship start, the Federal Government to date has exhibited little inclination to pay Fannie Mae, Freddie Mac or their equity owners for what was taken in 2009 as $60 billion of non-reimbursed HARP/HAMP costs were then off-loaded on the Companies.

72. Thus, the Net Worth Sweep is best viewed as being a mere extension of GSEs 2009 de facto Nationalization with once again the Federal Government's need to pay for taking extending solely to what was then taken, and not for what was thereafter fortuitously garnered in the second GSEs Nationalization, to wit, Junior Preferred dividend entitlement.

73. In February 2011, Treasury issued a white paper in which it set forth three basic ideas for Federal Government actions, to be taken in concert over time, to reduce and limit the GSEs' dominant mortgage market role, with the final purpose being to "ultimately wind down" (*i.e.,* liquidate Fannie and Freddie) (the "White Paper").

74. For GSEs' common share owners the Net Worth Sweep constituted a second (*i.e.*, after HARP/HAMP) per se de facto nationalization event, and uncompensated taking under the Fifth Amendment of the U.S. Constitution.

75. *For GSEs Junior Preferred Shareholders the Net Worth Sweep while initially in anticipatory breach of Junior Preferred contractual dividend entitlement and de facto nationalized Junior Preferred value taking, over time became absolute in its taking through the dividend entitlement breach, and otherwise was no more of an event for GSE Junior Preferred Shareholders than it was for the GSE debt holders, with both GSE debt and Junior Preferred equity owners operating under the same protection of payment afforded by the FG Implicit Guaranty of payment.*

76. *Between December 31, .2008, and December 31, 2017 both Fannie/Freddie year end audited certified balance sheets have consistently reflected $34 billion of Junior Preferred par value (i.e., Fannie Mae $19.13 billion; Freddie Mac $14.1 billion) in tandem placement immediately below the (senior in payment) Senior Preferred, and ABOVE the then Applicable Capital Reserve Amount. From December 31, 2008 to December 31, 2017, the $34 billion Fannie/Freddie Junior Preferred par value redemption payment amount has been 10 year auditor verified and listed as permanent "capital "(pre-conservatorship), and beginning year end 2009 as commitments and contingencies payables" just below Senior Preferred in wait and see for the Federal Government to announce its conservatorship end game of with either liquidation payment in full, or restored status as permanent (i.e., dividend paying) Senior (i.e., to common) capital.*

77. *Other than the Senior Preferred's status as senior in priority of payment, the Fannie/Freddie audited balance sheets reflect auditor verification of (a) the only meaningful difference in liquidation or other GSEs conservatorship ending between the Senior Preferred issue being priority in order of payment and (b) sufficient Fannie/Freddie equity value to pay both Senior Preferred and Junior Preferred 100% in full as either conservatorship ending, dividend paying permanent capital or par liquidation value.*

F. THE NET WORTH SWEEP WAS IN BREACH OF JUNIOR PREFERRED ENTITLEMENT TO RECEIVE DIVIDEND PAYMENTS.

78. The 2008 imposition of conservatorship, and SPSPA financing, merely suspended, but did not abolish the Fannie/Freddie Boards' ability to declare, and pay Junior Preferred dividends to equity owners.

79. The Net Worth Sweep triggered a dividend payment breach because it eliminated the Companies' ability to build capital, and in so doing effectively nullified, and eliminated the Board's exercise of its contractual dividend declaration functions.

80. The Net Worth Sweep which *sub silentio* altered, and illegally nullified, and eliminated Board dividend declaration function was in violation of the SPSPA and VSCA. Defendants' mindless agreement to the Net Worth Sweep allowed Treasury to expropriate approximately $10 billion (*i.e.,* Freddie Mac $5.8 billion; Fannie Mae $4.2 billion) of Junior Preferred dividend receipt entitlement.

81. In addition to their explicit terms, inherent in the Certificate of Designation governing each series of Fannie/Freddie preferred stock is an implied covenant of the Defendants to-deal fairly with the respective holders of every class of their preferred stock (*i.e.*, Junior Preferred, and Senior Preferred), and to fulfill the issuers' contractual obligations, and the stockholders' reasonable contractual good faith expectations, *e.g.*, an implied promise that the Companies would not take actions that would make it impossible for the holders of their preferred stock to realize any value from their dividend and liquidation rights. In near mindless adoption, ratification, and performance of the Third Amendment the Defendants both acted unfairly, and in bad faith with respect to the Plaintiff, as they breached each Company's implied covenant of good faith and fair dealing in grossly negligent Net Worth Sweep agreement acquiescence. Defendants' conduct made it impossible for the holders of each Company's Junior Preferred to realize value from their share contractual dividend entitlement rights, and in so doing denied Plaintiff the fruits of his agreement with both Fannie Mae, and Freddie Mac, respectively.

G. DEFENDANTS VIOLATED THEIR FIDUCIARY DUTIES TO PLAINTIFF BY ENTERING INTO THE THIRD AMENDMENT.

82. Federal law obligates both Fannie Mae and Freddie Mac to designate a body of law elected for its corporate governance practices and procedures, to the extent not inconsistent with its federal charter and other federal law, rules, and regulations. Freddie Mac designated the corporate law of the Commonwealth of Virginia while Fannie Mae designated the corporate law of Delaware for that purpose. Pursuant to federal law incorporating Virginia law, or Delaware law as applicable, the officers and directors of each Company owe fiduciary duties of due care and loyalty to both the Companies and their equity owners.

83. The Net Worth Sweep offered no benefits whatsoever to the Company or its Junior Preferred Shareholders. Rather, it was an egregiously unfair and blatantly illegal conversion, by effecting the Third Amendment, of nearly $10 billion (*i.e.*, Freddie Mac $5.8 billion approximately, Fannie Mae $4.2 billion approximately) of Plaintiff's dividend entitlement.

84. The Defendants' aid, abettance and Third Amendment acceptance actions were in conflict of interest, and breach, *inter alia,* of the Defendants' duty of loyalty, duty of care, and duty of utmost good faith owed to Plaintiff.

H. DEFENDANTS VIOLATED THEIR FIDUCIARY DUTIES TO PLAINTIFF BY AIDING AND ABETTING FEDERAL GOVERNMENT AVOIDANCE IMPLICIT GURANTY OF GSE SECURITIES PAYMENT AVOIDANCE

85. Regarding the GSE's September 6, 2008 entry into conservatorship and execution of the SPSPA's, Treasury Secretary Paulson on September 7, 2008 referenced the Government's implicit guaranty of GSEs debt obligations, and Treasury's SPSPA Agreements with the GSEs in a public announcement (the "Paulson Announcement"), stating as follows:

> "These Preferred Stock Purchase Agreements (*i.e.*, SPSPAs) were made necessary by the ambiguities in the GSE Congressional

> charters, which have been perceived to indicate government support for agency debt and guaranteed MBS. Our nation has tolerated these ambiguities for too long, and as a result GSE debt and MBS are held by central banks and investors throughout the United States and around the world who believe them to be virtually risk-free. Because the U.S. Government created these ambiguities, we have a responsibility to both avert and ultimately address the systemic risk now powered by the sale and breadth of the holdings of GSE debt and MBS.

86. Secretary Paulson did not directly address the GSEs preferred share's implicit guaranty of payment stating only:

> "Similarly, conservatorship does not eliminate the outstanding preferred stock, but *does place preferred shareholders second, after the common shareholders, in absorbing losses.*" [Emphasis Supplied]

- And -

> "The federal banking agencies are assessing the exposures of banks and thrifts to Fannie Mae and Freddie Mac. The agencies believe that, while many institutions held common or preferred shares of these two GSEs, only a limited number of smaller institutions have holdings that are significant compared to their capital.

87. Immediately following Secretary Paulson's September 7th statement, FHFA Director Lockhart made the following announcement:

> ". . . 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. Subordinated debt interest and principal payments will continue to be made."

88. Financial markets interpreted the September 7, 2008 announcements by Secretary Paulson and Director Lockhart to be a rejection and repudiation of the federal government's implicit guaranty of GSE's preferred shares payment, and at the Monday morning market opening GSEs preferred share prices collapsed from their Friday close.

89. Aside from Secretary Paulson's high minded ethical, and correct statements of October 8, 2008, (cited above), and Treasury September 11, 2008 $413 million Declared Dividend retraction and accompanied language of; "*Contracts are respected in this country as a fundamental part of the rule of law*" (cited above) Federal Governments expressions on the subject have been disappointingly silent.

90. *On December 21, 2017 the FHFA Regulator, and the Treasury agreed to reinstate the $3 billon Applicable Capital Reserve Amount for each of the GSEs. in status quo ante return to the SPSPA's Applicable Capital Reserve Amount initially set in 2008.*

91. In a letter agreement (attached hereto as Exhibit B, the "Letter Agreement") each of the GSEs, Treasury, and the Conservator agreed to change the terms of the SPSPA, Third Amendment so as to permit Fannie/Freddie to each retain a $3 billion capital reserve each quarter stating:

> "As a result of these agreements each GSE will only pay a dividend to Treasury if the net worth at the end of a quarter is more than $3 billion. The terms as described, apply to any quarterly dividend paid for the fourth quarter of 2017 and each quarter thereafter."

92. FHFA Regulator Director Watt independently issued a statement regarding the change stating:

> "While it is apparent that a draw will be necessary for each Enterprise if tax legislation results in a reduction to the corporate tax rate FHFA [Regulator] considers the $3 billion capital reserve to be adequate in the absence of exigent circumstances".

93. The Letter Agreement amended the SPSPA Senior Preferred Certificate of Designation so that effective January 1, 2018 the SPSPA "Applicable Capital Reserve Amount" was changed to read as follows:

> (c) For each Dividend Period from the date of the initial issuance of the Senior Preferred Stock through and including December 31,

2012, "dividend Rate" means 10.0 percent; provided, however, that if at any time the Company shall have for any reason immediately following such failure and for all Dividend Periods thereafter until the Dividend Period following the date on which the Company shall have paid in cash full cumulative dividends (including any unpaid dividends added to the Liquidation Preference pursuant to Section 8) the "Dividend Rate" shall mean 12.0 percent.

For each Dividend Period from January 1, 2013, and thereafter, the "Dividend Amount" for a Dividend Period means the amount, if any, by which the Net Worth Amount at the end of the immediately preceding fiscal quarter, less the Applicable Capital Reserve Amount for such Dividend Period, exceeds zero. In each case, "Net Worth Amount" means (i) the total assets of the Company (such assets excluding the Commitment and any unfunded amounts thereof) as reflected on the balance sheet of the Company as of the applicable date set forth in this Certificate, prepared in accordance with GAAP, less (ii) the total liabilities of the Company (such liabilities excluding any obligation in respect of any capital stock of the Company, including this Certificate), as reflected on the balance sheet of the Company as of the applicable date set forth in this Certificate, prepared in accordance with GAAP.

"Applicable Capital Reserve Amount" means, as of any date of determination, (A) for each Dividend Period from January 1, 2013, through and including December 31, 2013, $3,000,000,000; (B) for each Dividend Period occurring within each 12-month period thereafter, through and including December 31, 2017, $3,000,000,000 reduced by $600,000,000 for each such 12-month period, so that for each Dividend Period from January 1, 2017, through and including December 31, 2017, the Applicable Capital Reserve Amount shall be $600,000,000; and (C) for each Dividend Period from January 1, 2018, and thereafter, $3,000,000,000. Notwithstanding the foregoing, for each Dividend Period from January 1, 2018, and thereafter, following any Dividend Payment Date with respect to which the Board of Directors does not declare and pay a dividend or declares and pays a dividend in an amount less than the Dividend Amount, the Applicable Capital Reserve Amount shall thereafter be zero. For the avoidance of doubt, if the calculation of the Dividend Amount for a Dividend Period does not exceed zero, then no Dividend Amount shall accrue or be payable for such Dividend Period.

For the avoidance of doubt, following the amendment of the Certificate as provided in this Letter Agreement, Section 2 of the Certificate, as amended hereby, shall be deemed to be in form and

content substantially the same as the form and content of the Senior Preferred Stock in effect on September 30, 2012. [Emphasis Supplied]"

94. Defendants violated their fiduciary Duties to Plaintiff as a Fannie Mae, and Freddie Mac Junior Preferred equity owner by aiding and abetting the government in payment avoidance of the FG Implicit Guaranty of Junior Preferred dividend payment.

I. THE CASE TO DATE, AND RECENT EVENTS OF NOTE

95. On March 1, 2016, Plaintiff sent a letter, with copy of Perfidy attached to both of the Companies, and their respective Boards urging their members to start behaving as responsible Board members in the exercise of their duty to, *inter alia,* protect the property and other interests of the Companies, and their equity owners. Receiving no response, Plaintiff on April 19, 2016 sent a second letter, with a draft complaint ("Draft Complaint") attached, to the Boards (the "Second Letter").

96. Receiving no response to the Second Letter, Plaintiff was persuaded to not file the Draft Complaint, until the myriad of Third Amendment Constitutional Challenges (the "Constitutional Cases") were finally disposed of. On February 20, 2018 the Supreme Court declined to hear the Constitutional Cases, and Plaintiff determined to revise, and file the Draft Complaint in this amended form (*i.e.*, once again this "Complaint").

97. On May 20, 2014 Director Mel Watt in prepared remarks to the Bipartisan Policy Center stated that the most serious future risks facing the GSEs was their "lack of capital." He noted that by January 1, 2018 the GSEs would have no capital buffers by virtue of the Net Profit Sweep, and the SPSPA's sunset funding provisions having pinpointed the GSEs capitalization problems Director Watt then committed himself to rebuilding the GSEs net capital.

98. Shortly after Secretary Mnuchin nomination to be the Treasury Secretary Mr. Mnuchin was quoted as saying, "We've got to get Fannie and Freddie out of government

ownership". More recently (*i.e.*, January 30, 2018 he was quoted by the Washington Examiner as follows:

> "Mnuchin told lawmakers at a Senate Banking Committee hearing that his "strong preference" would be for Congress to overhaul the two government sponsored enterprises through bipartisan legislation. But he also noted that the Trump administration could act if Congress does not", and "There are certain administration options that we have". Mnuchin declined to specify what those alternatives might be though, saying that his comments could rile markets". [Emphasis Supplied]

99. Recognizing the Congressional GSE and conservatorship may be long in coming, one of the largest participants in the mortgage backed securities market (*i.e.*, Pimco) in February 2018 published its position on Fannie/Freddie reformation in a study entitled, in part, "Why Fix What Isn't Broken?" To that, Plaintiff adds that the Letter Agreement having rendered all of the previous Third Amendment court tests, other than those in the Court of Claims, moot and irrelevant, Treasury should not wait for Congress to act to resolve the Junior Preferred dividend issue. It should do so now, and in so doing, free the interminable GSE reformation debate from the rhetoric of Junior Preferred, and common equity owner Fifth Amendment taking compensation, and Third Amendment redress entitlement out of the reformation date.

CAUSES OF ACTION

COUNT I
BREACH OF FANNIE MAE AND FREDDIE MAC CONTRACTUAL DIVIDEND PAYMENTS

100. Plaintiff incorporates by reference and reallege each and every allegation set forth in this Complaint, as though fully set forth herein.

101. Pursuant to its enabling legislation, and its bylaws, Freddie Mac has designated that the VSCA controls for purposes of its corporate governance practices and procedures, and

Fannie Mae has designated that the DGCL controls for purposes of its corporate governance practices, and procedures.

102. The Certificates of Designation for the Fannie Mae and Freddie Mac preferred stock respectively were and are, for all purposes relevant hereto, contracts between the Plaintiff and the Companies.

103. Pursuant to 12 U.S.C. § 1467(b)(2), FHFA, as conservator of each Company, succeeded to the plenary management ". . . rights, powers, and privileges" of the respective Company, and its stockholders, including the Plaintiff.

104. The certificates of designation for both Fannie Mae, and Freddie Mac preferred stock provide for contractually specified dividend rights, liquidation preferences, and voting and consent rights with respect to amendments to the terms of their respective preferred stock issues.

105. As a Junior Preferred Shareholders of both Companies, Plaintiff enjoys certain contractual rights including but not limited to contractually specified, non-cumulative dividend payments.

106. The Third Amendment Net Worth sweep was an act of Fannie Mae, and Freddie Mac respectively Junior Preferred dividend receipt entitlement taking.

107. **The Third Amendment was, equally irrelevant to Plaintiff as a holder of Freddie/Fannie Junior Preferred, as it was to the holders of the Companies debt securities by reason, inter alia, of the FG Implicit Guaranty.**

108. By entering into the Net Worth Sweep, and thereafter causing the Companies to operate, and otherwise perform in accord with its provisions by declaring and paying dividends to Treasury as Senior Preferred Stockholder in excess of 10%, the Defendants breached the Companies obligations to Plaintiff to receive dividends on his Junior Preferred shares.

109. The Net Worth Sweep stripped the Company of its ability to generate and retain funds to pay dividends to holders of Fannie Mae and Freddie Mac Junior Preferred shares.

110. By expropriating the entirety of the Company's net worth, the Net Worth Sweep rendered a nullity the contractual right of the Plaintiff to receive dividend payments covered by the FG Implicit Guaranty of payment.

111. Fannie Mae and Freddie Mac are contractually prohibited from unilaterally changing the terms of its Junior Preferred Certificate of Designation so as to materially and adversely affect the rights of one class of Preferred Stockholders in favor of another. The Net Worth Sweep violates this prohibition by effectively making Plaintiff's Fannie/Freddie Junior Preferred share dividend payments impossible.

112. No provision of either Fannie Mae, or Freddie Mac Junior Preferred Certificate of Designation, or other contracts reserves to Freddie Mac or the Conservator any right to ***repudiate or nullify*** the Companies' federal government implicitly guaranteed contractual dividend payment obligations to Plaintiff as a Junior Preferred Shareholder.

113. Defendants breached the Company's contracts with the Plaintiff by aiding, abetting, and directing the Companies in their near mindless Third Amendment adoption and execution performance.

114. Plaintiff has suffered damages far in excess of $75,000, plus interest, as a direct and proximate result of the Defendants' foregoing breach of their contractual, and fiduciary duties and obligations.

COUNT II
BREACH OF IMPLIED COVENANTS OF GOOD FAITH AND FAIR DEALING

115. Plaintiff incorporates by reference and reallege each and every allegation set forth in this Complaint, as though fully set forth herein.

116. As alleged in Count I, the Net Worth Sweep violates respective provisions of the DCGL, and the VSCA, which for all purposes relevant hereto, is a contract between the Plaintiff and Fannie Mae, and Freddie Mac as applicable.

117. The Certificates of Designation for Fannie Mae, and Freddie Mac Junior Preferred Shareholders were and are, for all purposes relevant hereto, contracts between the Plaintiff and the Companies.

118. Inherent in these contracts was, and is, an implied covenant of good faith and fair dealing, requiring the Defendants to deal fairly with Plaintiff and the other holders of their Junior Preferred shares to fulfill their obligations to, and the reasonable contractual expectations of, Plaintiff in good faith, and not to deprive Plaintiff of the fruits of his share ownership bargain.

119. Defendants were obligated to act consistently with Fannie Mae, and Freddie Mac's responsibilities under their respective Certificates of Designation governing their Junior Preferred and Senior Preferred stock.

120. By entering into the Net Worth Sweep, and operating in compliance with its terms the Defendants effectively deprived Plaintiff of any possibility of ever again receiving dividends, and thus breached the implied covenant of good faith and fair dealing inherent in the Certificates of Designation for the Fannie Mae, and Freddie Mac Junior Preferred stock.

121. Through the implied covenant of good faith and fair dealing, Freddie Mac was prohibited from eliminating the rights and interests of the Junior Preferred Shareholders, including Plaintiff, with respect to dividends and their liquidation preferences. In effectively

eliminating such rights and interests entirely through the Net Worth Sweep, the Defendants acted arbitrarily and unreasonably and not in good faith or with fair dealing toward the respective to Plaintiff, and the Defendants' acts arbitrarily and unreasonably deprived Plaintiff of his reasonable contractual expectations and the fruits of his share ownership.

122. Plaintiff suffered well in excess of $75,000 in damages, plus interest, as a direct and proximate result of the Defendants' foregoing breach of the Junior Preferred Shares implied covenant of good faith and fair dealing.

COUNT THREE
AIDING AND ABETTING IN FEDERAL GOVERNMENT'S IMPLICIT GUARANTY EVASION AND PAYMENT AVOIDANCE

123. Plaintiff incorporates by reference and reallege each and every allegation set forth in this Complaint, as though fully set forth herein.

124. By complicit agreement to the Third Amendment expropriation of the entirety of the Companies' profits, and mindless rubber stamp of its performance between January 1, 2013 and December 31, 2018 Defendants rendered the respective contractual rights of the Plaintiff as a Junior Preferred Shareholder of Freddie Mac and Fannie Mae to receive dividend payments from the Companies a nullity, and in so doing aided and abetted the federal government in avoiding $10 billion of its implicit guaranty of such payments.

125. The Plaintiff suffered far in excess of $75,000, plus interest as a direct and proximate result of the Defendants' actions.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for relief and judgment, as follows:

A. Declaring that Defendants breached the terms of the Certificates of Designation governing Fannie Mae's and Freddie Mac's Junior Preferred stocks;

B. Declaring that Defendants breached the implied covenant of good faith and fair dealing inherent in the Certificates of Designation governing the Fannie Mae, and Freddie Mac Junior Preferred stock;

C. Awarding compensatory damages in favor of Plaintiff and against the Defendants for breach of Plaintiff's contractual rights for dividends, with interest thereon from the respective missed dividend payment dates.

D. Awarding in compensatory damages in favor of Plaintiff and against the Defendants for breaches of the Company's Certificates of Designation and the implied covenant of good faith and fair dealing, including interest thereon from the respective missed dividend payment dates;

E. Awarding compensatory damages in favor of Plaintiff for Aiding and Abetting the Federal Government in avoiding payment on its implicit guaranty of Junior Preferred dividends, with interest thereon from the respective missed dividend payment dates.

F. Awarding Plaintiff his reasonable costs and expenses incurred in this action, including counsel fees and expert fees; and

G. Such other and further relief as the Court may deem just and proper.

Dated: May 18, 2018

Joshua J. Angel
2 Park Avenue
New York, New York 10017
(917) 714-0409
joshuaangelnyc@gmail.com

Pro Se Plaintiff

VERIFICATION

Joshua J. Angel hereby verify that I am the pro-se Plaintiff, and I have authorized the filing of the attached complaint (the "Complaint"), that I have reviewed the Complaint, and that the facts therein are true and correct to the best of knowledge, information and belief.

I declare under penalty of perjury that the foregoing is true and correct.

DATE: May 18, 2018

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