

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

ARROWOOD INDEMNITY COMPANY,
et al.,

Plaintiffs,

v.

FEDERAL NATIONAL MORTGAGE
ASSOCIATION, *et al.*,

Defendants.

Civil No. 13-1439 (RCL)

**DEFENDANTS' ANSWER AND AFFIRMATIVE DEFENSES
TO PLAINTIFFS' FIRST AMENDED COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF AND DAMAGES**

Defendant Federal Housing Finance Agency (“FHFA”), Director Melvin L. Watt, the Federal National Mortgage Association (“Fannie Mae”), and the Federal Home Loan Mortgage Corporation (“Freddie Mac”) (collectively, “Defendants”), by and through their undersigned counsel, hereby provide the following Answer and Affirmative Defenses to the First Amended Complaint for Declaratory and Injunctive Relief and Damages, filed by Plaintiffs in the above-captioned action on November 9, 2017 (Doc. # 73-1).¹

1. Answering Paragraph 1, Defendants deny Paragraph 1.

¹ On November 1, 2017, Plaintiffs filed a motion for leave to amend with a proposed First Amended Complaint, which named Treasury and the Secretary of the Treasury as defendants. Doc. # 71. On November 9, 2017, pursuant to a stipulation, Plaintiffs filed a revised proposed First Amended Complaint that withdrew Treasury and the Treasury Secretary as defendants. Doc. # 73. On February 1, 2018, the Court ordered that the “Revised Proposed Amended Complaint at [Doc.] #73 shall be filed.” Doc. # 82. However, the complaint that was thereafter filed on the docket (on February 1, 2018, Doc. # 83) was the November 1, 2017 version of the complaint—not the operative November 9, 2017 version. Thus, in light of the November 9, 2017 stipulation and the Court’s February 1, 2018 order, Defendants hereby provide their Answer and Affirmative Defenses to the First Amended Complaint filed by Plaintiffs on November 9, 2017 (at Doc. # 73-1).

2. Answering Paragraph 2, Defendants deny Paragraph 2.

3. Answering Paragraph 3, Defendants state that they lack knowledge or information sufficient to form a belief regarding the allegations of Paragraph 3, and therefore deny those allegations.

4. Answering Paragraph 4, Defendants state that the allegations of this paragraph constitute legal conclusions to which no response is required. Defendants further state that the allegations of Paragraph 4 pertaining to Counts I, II, IV, V, and VI pertain to claims that were dismissed by this Court on September 30, 2014, which dismissal was affirmed by the D.C. Circuit on February 21, 2017 (with an opinion reissued on July 17, 2017), and and/or by this Court on September 28, 2018, and thus do not require a response.

5. Answering Paragraph 5, Defendants state that the allegations of this paragraph constitute legal conclusions to which no response is required.

6. Answering Paragraph 6, Defendants state that they lack knowledge or information sufficient to form a belief regarding the allegations of Paragraph 6 and therefore deny those allegations.

7. Answering Paragraph 7, Defendants state that they lack knowledge or information sufficient to form a belief regarding the allegations of Paragraph 7 and therefore deny those allegations.

8. Answering Paragraph 8, Defendants state that they lack knowledge or information sufficient to form a belief regarding the allegations of Paragraph 8 and therefore deny those allegations.

9. Answering Paragraph 9, Defendants state that they lack knowledge or information sufficient to form a belief regarding the allegations of Paragraph 9 and therefore deny those allegations.

10. Answering Paragraph 10, Defendants state that they lack knowledge or information sufficient to form a belief regarding the allegations of Paragraph 10 and therefore deny those allegations.

11. Answering Paragraph 11, Defendants state that they lack knowledge or information sufficient to form a belief regarding the allegations of Paragraph 11 and therefore deny those allegations.

12. Answering Paragraph 12, Defendants state that they lack knowledge or information sufficient to form a belief regarding the allegations of Paragraph 12 and therefore deny those allegations.

13. Answering Paragraph 13, Defendants admit that FHFA, when acting in its regulatory capacity, is an independent agency of the United States Government subject to the Administrative Procedure Act. Defendants deny that FHFA, when acting within its statutory powers as Conservator, is an agency of the United States government subject to the APA. Defendants admit the second and third sentences of Paragraph 13 and further state that FHFA's current zip code is 20219.

14. Answering Paragraph 14, Defendants state this paragraph pertains to a claim that was dismissed by this Court on September 30, 2014, which dismissal was affirmed by the D.C. Circuit on February 21, 2017 (with an opinion reissued on July 17, 2017), and thus does not require a response.

15. Answering Paragraph 15, Defendants admit that Fannie Mae is a federally chartered corporation with its principle executive offices located within the District of Columbia. Defendants deny the remaining allegations in Paragraph 15.

16. Defendants admit Paragraph 16.

17. Defendants admit Paragraph 17.

18. Answering Paragraph 18, Defendants state that they lack knowledge or information sufficient to form a belief regarding whether all stockholders of the Companies (other than Treasury) are private, and therefore Defendants deny the first sentence of Paragraph 18. Defendants admit the remaining allegations of Paragraph 18.

19. Answering Paragraph 19, Defendants deny that Fannie Mae and Freddie Mac were “forced into conservatorship.” Defendants admit the remaining allegations of Paragraph 19.

20. Answering Paragraph 20, Defendants state that they lack knowledge or information sufficient to form a belief regarding the allegations in the second sentence of Paragraph 20, and therefore deny those allegations. Defendants deny all other allegations in Paragraph 20.

21. Answering Paragraph 21, Defendants admit that during the summer of 2008 Treasury Secretary Henry Paulson and then-OFHEO Director Lockhart made public statements concerning Fannie Mae and Freddie Mac, and Defendants refer to those statements for their contents. Defendants admit that it was reported on July 8, 2008 that then-Director Lockhart made the statement quoted in the second sentence of Paragraph 21, and Defendants refer to that statement for its contents. Defendants further admit that Secretary Paulson testified before the House Financial Services Committee on July 10, 2008, and Defendants refer to the transcript of

that testimony for its contents. Defendants further admit that Director Lockhart issued a statement on July 13, 2008, and Defendants refer to that statement for its contents. Defendants further admit the existence of a BlackRock document dated August 25, 2008 concerning Freddie Mac (entitled “Freddie Mac Confidential Capital Review - Preliminary Results”), and Defendants refer to that document for its contents. Defendants deny all allegations of Paragraph 21 not specifically admitted herein.

22. Answering Paragraph 22, Defendants state that they lack knowledge or information sufficient to form a belief regarding the allegations in Paragraph 22 and therefore deny those allegations.

23. Answering Paragraph 23, Defendants admit that Treasury publicly advocated for legislation that ultimately became HERA, and that Congress enacted HERA in the summer of 2008. Defendants further admit that FHFA succeeded to the regulatory authority over Fannie Mae and Mac Freddie previously held by OFHEO, and that HERA authorized FHFA to place Fannie Mae and Freddie Mac into conservatorship or receivership. Defendants refer to HERA for its contents. Defendants deny all allegations of Paragraph 23 not specifically admitted herein.

24. Answering Paragraph 24, Defendants state that the allegations of Paragraph 24 constitute legal conclusions to which no response is required. Defendants admit that Congress enacted the FDIA and HERA, and Defendants refer to those statutes for their contents. Defendants further state that the third sentence of Paragraph 24 pertains to claims that were dismissed by this Court on September 30, 2014, which dismissal was affirmed by the D.C. Circuit on February 21, 2017 (with an opinion reissued on July 17, 2017), and also by this Court’s opinion on September 28, 2018, and thus does not require a response. To the extent any

response is required, Defendants deny the third sentence of Paragraph 24, and deny all other allegations of Paragraph 24 not specifically admitted herein.

25. Answering Paragraph 25, Defendants admit that FHFA issued a Report to Congress dated May 25, 2010, and a Strategic Plan dated February 21, 2012, and Defendants refer to those documents for their contents. Defendants further admit that Mr. Ugoletti gave deposition testimony, and Defendants refer to the transcript of that testimony for its contents. Defendants further admit the existence of documents that contain portions of text quoted in the second textual sentence of Paragraph 25, and Defendants refer to those documents for their contents, but Defendants deny that those documents were jointly “prepared by FHFA and Treasury.” Defendants deny all allegations of Paragraph 25 not specifically admitted herein.

26. Answering Paragraph 26, Defendants state that allegations of Paragraph 26 constitute legal conclusions to which no response is required. To the extent a response is required, Defendants admit that then-Acting Director DeMarco sent a letter to Congress dated February 2, 2010, Defendants refer to that letter for its contents, and Defendants otherwise deny Paragraph 26.

27. Answering Paragraph 27, Defendants state that allegations of Paragraph 27 constitute legal conclusions to which no response is required. To the extent a response is required, Defendants admit that FHFA promulgated a regulation appearing at 12 C.F.R. § 1237.3, and FHFA addressed that regulation in the Federal Register (76 Fed. Reg. at 35730), and Defendants refer to those documents for their contents. Defendants further admit the existence of an FHFA document entitled “Federal Housing Finance Agency - ABS East,” dated October 20, 2008 (FHFA00047705), and an FHFA document “Financial Crisis: Update on Housing

Finance & Regulations,” dated November 19, 2008 (FHFA00047675), and Defendants refer to those documents for their contents.

28. Answering Paragraph 28, Defendants admit that the Companies’ boards consented to conservatorship, and that FHFA was prepared to place the Companies in conservatorships, if necessary, absent the boards’ consent. Defendants deny the remaining allegations of Paragraph 28.

29. Answering Paragraph 29, Defendants deny the first sentence of Paragraph 29. Defendants admit that FHFA issued a “Fact Sheet” on or around September 7, 2008, and Defendants refer to that document for its contents. Defendants further admit that then-Director Lockhart testified before Congress on September 25, 2008, and Defendants refer to the transcript of that testimony for its contents.

30. Answering Paragraph 30, Defendants admit that FHFA issued a “Fact Sheet” on or around September 7, 2008, and Defendants refer to that document for its contents. Defendants further state that the allegations in the second sentence of Paragraph 30 constitute legal conclusions to which no response is required.

31. Defendants deny Paragraph 31.

32. Answering Paragraph 32, Defendants admit the first sentence of Paragraph 32. The remaining allegations of Paragraph 32 constitute characterizations of the PSPAs to which no response is required. To the extent any response is required, Defendants refer to the PSPAs for their contents.

33. Answering Paragraph 33, Defendants admit that Treasury and FHFA as Conservator executed the PSPAs, and refer to the PSPAs for their contents. Defendants further

admit the existence of an Action Memorandum for Secretary Paulson dated September 7, 2008, and Defendants refer to that document for its contents.

34. Answering Paragraph 34, Defendants admit that Treasury and FHFA as Conservator executed the PSPAs, and refer to the PSPAs for their contents.

35. Answering Paragraph 35, Defendants state that the allegations of Paragraph 35 constitute legal conclusions to which no response is required. To the extent any response is required, Defendants admit that, pursuant to the PSPAs, Treasury purchased senior preferred stock from Fannie Mae and Freddie Mac (referred to herein as the “senior preferred stock”), and Defendants refer to the PSPAs and senior preferred stock certificates of designation for their contents.

36. Answering Paragraph 36, Defendants deny the first sentence of Paragraph 36. Defendants admit the existence of a document attached to a September 16, 2008 e-mail between FHFA officials that contains the words “paid in-kind,” and Defendants refer to that document for its contents. Defendants further admit the existence of an FHFA document that includes the phrase quoted in the third sentence of Paragraph 36, and Defendants refer to that document for its contents. Defendants admit the fourth sentence of Paragraph 36. Defendants state that they lack knowledge or information sufficient to form a belief regarding the allegations in the fifth sentence of Paragraph 36, and therefore deny those allegations. Defendants admit that Mr. Ugoletti sent an e-mail on August 17, 2012, that included the words “in kind,” and Defendants refer to that document for its contents. Defendants deny all allegations of Paragraph 36 not specifically admitted herein.

37. Answering Paragraph 37, Defendants state that, under the senior preferred stock certificates of designation, the Companies would accrue a 12% dividend in the event the

Companies failed to pay the 10% dividend in cash. Defendants state that they lack knowledge or information sufficient to form a belief regarding the allegations of the sixth textual sentence of Paragraph 37 (which begins with “And in 2012...”), and therefore deny those allegations.

Defendants admit that Treasury issued a fact sheet dated September 7, 2008, and Defendants refer to that document for its contents. Defendants further admit the existence of an October 2008 e-mail from a Grant Thornton employee to Treasury and FHFA officials that includes the text quoted in the fourth sentence of Paragraph 37 (which begins with “In an October 2008 e-mail...”), and Defendants refer to that document for its contents. Defendants admit the fifth sentence of Paragraph 37 (which begins with “An internal Treasury document says...”).

Defendants further admit the existence of a Treasury presentation to the SEC dated June 13, 2012, and Defendants refer to that document for its contents.

38. Answering Paragraph 38, Defendants admit that certain employees of the Companies understood that, under the senior preferred stock certificates of designation, the Companies would accrue a 12% dividend in the event the Companies failed to pay the 10% dividend in cash. Defendants admit that the Fannie Mae’s former CFO Susan McFarland and Freddie Mac’s former CFO Ross Kari have given deposition testimony, and Defendants refer to the transcripts of their testimony for their contents. Defendants further admit the existence of documents that contain the text quoted in the third and fourth sentences of Paragraph 38, and Defendants refer to those documents for their contents.

39. Answering Paragraph 39, Defendants state that the allegations in the first sentence and third sentence (which starts with “In other words...”) constitute legal conclusions to which no response is required. Defendants further state that certain allegations in Paragraph 39 purport to characterize the PSPAs, and Defendants refer to the PSPAs for their contents. Defendants

admit the existence of a Congressional Research Service document dated August 10, 2012, and Defendants refer to that document for its contents. Defendants deny all allegations of Paragraph 39 not specifically admitted herein.

40. Answering Paragraph 40, Defendants admit that the PSPAs contain the text quoted in the first sentence of Paragraph 40, and Defendants refer to the PSPAs for their contents. Defendants further state that the manner in which the Periodic Commitment Fee is to be set is described in the PSPAs, and Defendants refer to the PSPAs for their contents. Defendants admit that Treasury waived the Periodic Commitment Fee on multiple occasions, but Defendants state that they lack knowledge or information sufficient to form a belief regarding the remaining allegations of the third sentence of Paragraph 40 and therefore deny those allegations. Defendants further state that the allegations in the fourth sentence of Paragraph 40 contain legal conclusions to which no response is required, and also contain allegations for which Defendants lack knowledge or information sufficient to form a belief and therefore deny. Defendants admit Section 3.2(c) of the PSPAs addresses the Periodic Commitment Fee and Defendants refer to the PSPAs for their contents. Defendants deny all allegations of Paragraph 40 not specifically admitted herein.

41. Answering Paragraph 41, Defendants admit the existence of an Action Memorandum for Secretary Paulson dated September 7, 2008, and Defendants refer to that document for its contents. Defendants further state that the allegations of the second and third sentences of Paragraph 41 purport to characterize the PSPAs and senior preferred stock certificate of designation, and Defendants refer to those documents for their contents. Defendants deny all allegations of Paragraph 41 not specifically admitted herein.

42. Answering Paragraph 42, Defendants admit that FHFA as Conservator and Treasury amended the PSPAs on May 6, 2009, and December 24, 2009, and Defendants refer to those documents for their contents. Defendants deny all allegations of Paragraph 42 not specifically admitted herein.

43. Defendants deny Paragraph 43.

44. Answering Paragraph 44, Defendants admit that the Companies recorded in their respective consolidated balance sheets deferred tax asset valuation allowances after the appointment of the Conservator, which caused a reduction in the Companies' net worth. Defendants further admit the second, third, and fourth sentences of Paragraph 44. Defendants deny the remaining allegations of Paragraph 44.

45. Answering Paragraph 45, Defendants admit the second sentence of Paragraph 45. Defendants lack knowledge or information sufficient to form a belief regarding the accuracy of the chart included in Paragraph 45, and therefore deny the fourth sentence of Paragraph 45. Defendants deny the fifth sentence of Paragraph 45 and deny all allegations of Paragraph 45 not specifically admitted herein.

46. Answering Paragraph 46, Defendants state that they lack knowledge or information sufficient to form a belief regarding the allegations in Paragraph 46, and therefore deny those allegations.

47. Answering Paragraph 47, Defendants deny the first sentence of Paragraph 47. Defendants admit the existence of an e-mail exchange between FHFA officials in June 2011 that contains the language quoted in the second sentence of Paragraph 47 (FHFA00081220), and Defendants refer to that document for its contents. Defendants further admit the existence of November 2011 document from Grant Thornton that contains the text quoted in the last sentence

of Paragraph 47, and Defendants refer to that document for its contents. Defendants deny all allegations of Paragraph 47 not specifically admitted herein.

48. Answering Paragraph 48, Defendants state that they lack knowledge or information sufficient to form a belief about the allegations of the third and fourth sentences of Paragraph 48 (which start with “Approximately \$26 billion...” and “(In other words...)”), and therefore deny those allegations. Defendants state that the allegations in the fifth sentence of Paragraph 48 (which starts with “Had the dividends...”) constitute legal conclusions to which no response is required. Defendants deny all remaining allegations of Paragraph 48.

49. Answering Paragraph 49, Defendants deny the first sentence of Paragraph 49 and admit the second sentence of Paragraph 49. Defendants admit that FHFA periodically publishes a House Price Index and Defendants refer to those indices for their contents. Defendants admit that FHFA’s Monthly House Price Index for U.S. (Purchase-Only, Seasonally Adjusted Index) reached its lowest point (between 2006 and the present) in or around 2011.

50. Answering Paragraph 50, Defendants admit that, in and around 2012, underwriting standards at the Companies were stricter than they had been at certain times in the past. Defendants admit that loans originated after 2008, excluding relief refinance loans, generally had lower delinquency rates than loans originated in or around 2005 to 2008. Defendants admit the existence of an e-mail from a Treasury official containing the text quoted in the third sentence of Paragraph 50 and Defendants refer to that document for its contents. Defendants further admit the existence of a Treasury document that contains the text quoted in the fourth sentence of Paragraph 50 and Defendants refer to that document for its contents. Defendants deny all allegations of Paragraph 50 not specifically admitted herein.

51. Answering Paragraph 51, Defendants deny the first sentence of Paragraph 51. Defendants admit the existence of a presentation in Treasury's possession that contains the text quoted in the second sentence of Paragraph 51 and Defendants refer to that document for its contents. Defendants admit that Fannie Mae's and Freddie Mac's financial performance generally improved from the first quarter of 2012 to the second quarter of 2012. Defendants admit that an e-mail was circulated among FHFA officials that contained the text quoted in the fourth sentence of Paragraph 51, and Defendants refer to that document for its contents. Defendants admit the existence of a report that was sent to certain FHFA officials that contained the text quoted in the fifth sentence of Paragraph 51, and Defendants refer to that document for its contents. Defendants admit that Treasury officials wrote e-mails containing the text quoted in the sixth and seventh sentences of Paragraph 51, and Defendants refer to those documents for their contents. Defendants deny all allegations of Paragraph 51 not specifically admitted herein.

52. Answering Paragraph 52, Defendants admit the first sentence of Paragraph 52. Defendants further admit that Fannie Mae created a presentation for the August 9, 2012 meeting that included a page entitled "Annual Detail of Cumulative Dividends and SPSA Draws," and Defendants refer to that presentation for its contents. Defendants deny the third sentence of Paragraph 52. Defendants deny all allegations of Paragraph 52 not specifically admitted herein.

53. Answering Paragraph 53, Defendants admit that Fannie Mae and Freddie Mac have generated profits in certain quarters since 2012 and Defendants refer to Fannie Mae and Freddie Mac's SEC filings for a description of their respective earnings. Defendants deny the second sentence of Paragraph 53. Defendants admit that, for the first two quarters of 2012, Fannie Mae reported total net income \$7.8 billion, and Freddie Mac reported total net income of \$3.6 billion.

54. Defendants deny Paragraph 54.

55. Answering Paragraph 55, Defendants lack knowledge or information sufficient to form a belief about Treasury's "awareness" regarding loan loss reserves and therefore deny the first sentence. Defendants admit that, in general, the Companies' loan loss reserves exceeded their actual losses. Defendants further admit that, in general, loan loss reserves reduce net worth and their reversal increases net worth. Defendants admit the existence of a Fannie Mae presentation to FHFA that contains the text quoted in the third sentence of Paragraph 55, and Defendants refer to that document for its contents. Defendants admit the existence of a May 2012 Freddie Mac loan loss presentation shared with FHFA officials that contains the text quoted in the fourth sentence of Paragraph 55, and Defendants refer to that document for its contents. Defendants admit the existence of an e-mail from a Treasury official that contains the text quoted in the fifth sentence of Paragraph 55, and Defendants refer to that document for its contents. Defendants admit the existence of a July 2012 FHFA presentation on the Companies' financial performance, which may be the document referenced in the sixth sentence of Paragraph 55 and Defendants refer to that document for its contents. Defendants admit the existence of a Treasury document that contains the text quoted in the seventh sentence of Paragraph 55, and Defendants refer to that document for its contents. Defendants deny all allegations of Paragraph 55 not specifically admitted herein.

56. Answering Paragraph 56, Defendants deny the first sentence of Paragraph 56. Defendants admit the second sentence of Paragraph 56. Defendants further admit that by mid-2012 Fannie Mae and Freddie Mac's combined deferred tax asset valuation allowances were approximately \$90 to \$100 billion. Defendants deny the fourth sentence of Paragraph 56 and Defendants deny all allegations of Paragraph 56 not specifically admitted herein.

57. Answering Paragraph 57, Defendants deny the first sentence of Paragraph 57. Defendants admit that, on July 13, 2012, Bradford Martin sent a document containing financial projections to other FHFA officials, and Defendants refer to that document for its contents. Defendants deny all allegations of Paragraph 57 not specifically admitted herein.

58. Answering Paragraph 58, Defendants admit that, on July 13, 2012, Bradford Martin sent a document containing financial projections to other FHFA officials, and Defendants refer to that document for its contents. Defendants further admit that Susan McFarland gave deposition testimony and Defendants refer to the transcript of that testimony for its contents. Defendants further admit the fifth sentence of Paragraph 58. Defendants deny all allegations of Paragraph 58 not specifically admitted herein.

59. Answering Paragraph 59, Defendants lack knowledge or information sufficient to form a belief regarding the allegations in the first sentence of Paragraph 59, and therefore deny those allegations. Defendants admit the existence of a May 2012 meeting agenda that includes the text quoted in the second sentence of Paragraph 59, and Defendants refer to that document for its contents. Defendants admit the existence of a Grant Thornton document (GT005322) that contains handwritten text, and Defendants refer to that document for its contents. Defendants further state that they lack knowledge or information sufficient to form a belief regarding the allegations in the fourth, fifth, and sixth sentences of Paragraph 59, and therefore deny those allegations. Defendants deny all allegations of Paragraph 59 not specifically admitted herein.

60. Answering Paragraph 60, Defendants lack knowledge or information sufficient to form a belief regarding the allegations in the first, second, and fifth sentences of Paragraph 60, and therefore deny those allegations. Defendants further admit that Susan McFarland gave deposition testimony that described an August 9, 2012 meeting with Treasury, and Defendants

refer to that deposition transcript for its contents. Defendants deny all allegations of Paragraph 60 not specifically admitted herein.

61. Answering Paragraph 61, Defendants admit that FHFA as Conservator brought several suits alleging securities law violations and fraud in connection with the sale of private-label securities to Fannie and Freddie. Defendants admit the second sentence of Paragraph 61. Defendants deny the third sentence of Paragraph 61, and deny all other allegations of Paragraph 66 not specifically admitted herein.

62. Answering Paragraph 62, Defendants admit that FHFA as Conservator and Treasury executed the Third Amendment on August 17, 2012, and Defendants refer to that amendment for its contents. Defendants further state that, on December 21, 2017, the Conservator and Treasury agreed to reinstate a \$3 billion capital reserve amount under the PSPAs for each Enterprise beginning in the fourth quarter of 2017. Defendants deny all allegations of Paragraph 62 not specifically admitted herein.

63. Answering Paragraph 63, Defendants admit the existence of a Treasury memo dated June 25, 2012 that purports to describe a meeting between then-Secretary Geithner and then-Acting Director DeMarco and contains the text quoted in Paragraph 63, and Defendants refer to that memo for its contents. Defendants deny all remaining allegations of Paragraph 63.

64. Answering Paragraph 64, Defendants deny the first sentence of Paragraph 64. Defendants lack knowledge or information sufficient to form a belief as to the identity of the documents referenced in the second sentence of Paragraph 64, and therefore Defendants deny the allegations in that sentence. Defendants admit the existence of Treasury documents that contain the text quoted in the third and fourth sentences of Paragraph 64, and Defendants refer to those documents for their contents. Defendants further admit the existence of a July 20, 2012 e-mail

from a Treasury official that contains the text quoted in the fifth sentence of Paragraph 64, and Defendants refer to that documents for its contents. Defendants deny all allegations of Paragraph 64 not specifically admitted herein.

65. Answering Paragraph 65, Defendants lack knowledge or information sufficient to form a belief regarding the first three sentences of Paragraph 65. Defendants admit that FHFA has publicly stated that Congress will determine the future of Fannie Mae and Freddie Mac and the housing finance market. Defendants admit the existence of Treasury documents containing the text quoted in the fourth, fifth, and sixth sentences of Paragraph 65, and refer to those documents for their contents. Defendants further admit the existence of an email from an FHFA official dated August 9, 2012 that contains the text quoted in the seventh sentence of Paragraph 65, and Defendants refer to that document for its contents. Defendants deny all allegations of Paragraph 65 not specifically admitted herein.

66. Answering Paragraph 66, Defendants deny the first sentence of Paragraph 66. Defendants lack knowledge or information sufficient to form a belief regarding the allegations of the second sentence of Paragraph 66, and therefore deny those allegations. Defendants admit the existence of an e-mail from Mr. Parrott to Treasury officials containing the text quoted in the third sentence of Paragraph 66, and Defendants refer to that e-mail for its contents. Defendants deny the fourth sentence of Paragraph 66.

67. Answering Paragraph 67, Defendants deny the first sentence of Paragraph 67. Defendants admit the existence of an e-mail from Mr. Parrott to Alex Pollock, Peter Wallison, and Edward Pinto containing the text quoted in the second sentence of Paragraph 67, and Defendants refer to that document for its contents. Defendants admit the existence of a 2011 policy paper authored by Wallison, Pollock, and Pitino, and Defendants refer to that document

for its contents. Defendants further admit the existence of a Huffington Post article dated August 23, 2012 purporting to quote a statement attributed to Peter Wallison by a Bloomberg article, and Defendants refer to that document for its contents. Defendants further admit the existence of an e-mail from Mr. Parrott that contains the text quoted in the last sentence of Paragraph 67, and Defendants refer to that document for its contents. Defendants deny all allegations of Paragraph 67 not specifically admitted herein.

68. Answering Paragraph 68, Defendants admit the existence of an e-mail from Mr. Parrott that contains the text quoted in Paragraph 68, and Defendants refer to that document for its contents. Defendants deny all allegations of Paragraph 68 not specifically admitted herein.

69. Answering Paragraph 69, Defendants admit the existence of an e-mail from Mr. Parrott containing the text quoted in Paragraph 69, and Defendants refer to that document for its contents. Defendants deny all allegations of Paragraph 69 not specifically admitted herein.

70. Answering Paragraph 70, Defendants deny the first sentence of Paragraph 70. Defendants admit that Ms. McFarland gave deposition testimony, and Defendants refer to the transcript of that testimony for its contents. Defendants further admit the existence of an e-mail from Mr. Ugoletti dated August 17, 2012 that contains the text quoted in the last sentence of Paragraph 70, and Defendants refer to that document for its contents. Defendants deny all allegations of Paragraph 70 not specifically denied herein.

71. Answering Paragraph 71, Defendants admit that Treasury issued a press release on August 17, 2012 that contains the text quoted in the first sentence of Paragraph 71, and Defendants refer to that document for its contents. Defendants deny the second textual sentence of Paragraph 71. Defendants admit that Mr. Ugoletti gave deposition testimony, and Defendants

refer to the transcript of that testimony for its contents. Defendants deny all allegations of Paragraph 71 not specifically admitted herein.

72. Answering Paragraph 72, Defendants admit the existence of a draft document prepared by Treasury that contains the text quoted in the last sentence of Paragraph 72, and refer to that document for its contents. Defendants deny all remaining allegations of Paragraph 72.

73. Answering Paragraph 73, Defendants deny the first sentence of Paragraph 73. Defendants further state that the allegations of the second and third sentences of Paragraph 73 purport to characterize the PSPAs and senior preferred stock certificates of designation, and Defendants refer to those documents (including the December 2017 letter agreement) for their contents.

74. Answering Paragraph 74, Defendants deny the first sentence of Paragraph 74. Defendants admit that former Director DeMarco gave deposition testimony in which he answered questions about the GSEs' cost of borrowing, and Defendants refer to the transcript of that deposition for its contents.

75. Answering Paragraph 75, Defendants state that they lack knowledge or information sufficient to form a belief regarding the allegations in the first sentence of Paragraph 75 and therefore deny those allegations. Defendants further admit that under the Third Amendment, the Companies pay a quarterly dividend to Treasury based on the Companies' net worth, minus a capital buffer established in December 2017. Defendants further admit that Director Watt made statements that contain the text quoted in the fourth sentence of Paragraph 75 (before the establishment of the capital buffer in December 2017), and Defendants refer to those statements for their contents.

76. Answering Paragraph 76, Defendants deny the first sentence of Paragraph 76. Defendants admit that Director DeMarco gave deposition testimony in this case that included the text quoted in the second sentence of Paragraph 76, and Defendants refer to the transcript of that deposition for its contents. Defendants deny all allegations of Paragraph 76 not specifically admitted herein.

77. Answering Paragraph 77, Defendants state that the first sentence of Paragraph 77 purports to characterize the Third Amendment and PSPAs, and Defendants refer to those documents for their contents. Defendants admit that Treasury waived the periodic commitment fee before the Third Amendment, and that the manner in which the amount of the Periodic Commitment Fee was to be set is described in the PSPAs, to which Defendants refer for their contents. Defendants deny the third sentence of Paragraph 77. Defendants admit the existence of a Freddie Mac presentation that contains the text quoted in the fourth sentence of Paragraph 77, and Defendants refer to that document for its contents. Defendants deny the fifth sentence of Paragraph 77. Defendants lack knowledge or information sufficient to form a belief regarding the allegations of the sixth sentence of Paragraph 77 because Defendants lack knowledge or information regarding what Plaintiffs mean by the “early draft of the PSPAs” referred to in this sentence. Defendants thus deny the sixth sentence of Paragraph 77. Defendants deny all allegations of Paragraph 77 not specifically admitted herein.

78. Answering Paragraph 78, Defendants refer to the PSPAs for their contents, and otherwise deny the remaining allegations of Paragraph 78.

79. Answering Paragraph 79, Defendants lack knowledge or information sufficient to form a belief regarding the allegations in the first sentence of Paragraph 79, and therefore deny those allegations. Defendants admit that Mr. Parrott gave deposition testimony, and Defendants

refer to the transcript of that testimony for its contents. Defendants admit the third sentence of Paragraph 79. Defendants lack knowledge or information sufficient to form a belief regarding the allegations in the fourth sentence of Paragraph 79, and therefore deny those allegations. Defendants admit the existence of the Proposed Findings of Fact cited in Paragraph 79, and Defendants refer to that document for its contents. Defendants deny all allegations of Paragraph 79 not specifically admitted herein.

80. Answering Paragraph 80, Defendants admit that, in light of its historic commitment of funds to the Companies, Treasury bargained for and received significant rights under the PSPAs, which have been in place since the beginning of the conservatorship. Defendants otherwise deny the first sentence of Paragraph 80. Defendants admit the existence of a Deloitte & Touche document that contains the text quoted in the second sentence of Paragraph 80, and Defendants refer to that document for its contents. Defendants further admit the existence of Henry Paulson's book entitled "On the Brink," and Defendants refer to that book for its contents. Defendants admit that Deborah Lucas provided testimony to a Congressional committee on or around June 2, 2011, and Defendants refer to the transcript of that testimony for its contents. Defendants lack knowledge or information sufficient to form a belief regarding the allegations in the last sentence of Paragraph 80, and therefore deny those allegations. Defendants deny all allegations of Paragraph 80 not specifically admitted herein.

81. Answering Paragraph 81, Defendants lack knowledge or information sufficient to form a belief regarding the first, second, and third sentences of Paragraph 81, and therefore deny those allegations. Defendants admit the existence of a Treasury document that contains the text quoted in the second sentence of Paragraph 81, and Defendants refer that document for its

contents. Defendants deny the fourth sentence of Paragraph 81, and deny all allegations of Paragraph 81 not specifically admitted herein.

82. Answering Paragraph 82, Defendants state that this paragraph pertains to claims that were dismissed by this Court on September 30, 2014, which dismissal was affirmed by the D.C. Circuit on February 21, 2017 (with an opinion reissued on July 17, 2017), and thus does not require a response. To the extent any response is required, Defendants state that the allegations in the first sentence of Paragraph 82 constitute legal conclusions to which no response is required. Defendants further state that the second sentence of Paragraph 82 purports to quote from HERA, and Defendants refer to HERA for its contents. Defendants admit that certain Treasury officials gave deposition testimony concerning the Third Amendment, and Defendants refer to the transcripts of that testimony for their contents. Defendants deny all allegations of Paragraph 82 not specifically admitted herein.

83. Answering Paragraph 83, Defendants state that this paragraph pertains to claims that were dismissed by this Court on September 30, 2014, which dismissal was affirmed by the D.C. Circuit on February 21, 2017 (with an opinion reissued on July 17, 2017), and thus does not require a response. Defendants further state that the allegations in the first sentence of Paragraph 83 constitute legal conclusions to which no response is required. To the extent any response is required, Defendants deny the first sentence of Paragraph 83. Defendants admit that former Acting Director DeMarco and Mario Ugoletti gave deposition testimony concerning the Third Amendment, and Defendants refer to the transcripts of those depositions for their contents. Defendants further state that the allegations in the fourth sentence of Paragraph 83 constitute legal conclusions to which no response is required. To the extent any response is required, Defendants deny the fourth sentence of Paragraph 83. Defendants deny the fifth sentence of

Paragraph 83. Defendants admit the existence of the February 2, 2010 letter from then-Acting Director DeMarco, and Defendants refer to that document for its contents. Defendants deny all allegations of Paragraph 83 not specifically admitted herein.

84. Answering Paragraph 84, Defendants state that this paragraph pertains to claims that were dismissed by this Court on September 30, 2014, which dismissal was affirmed by the D.C. Circuit on February 21, 2017 (with an opinion reissued on July 17, 2017), and thus does not require a response. Defendants further state that the allegations in the first sentence of Paragraph 84 constitute legal conclusions to which no response is required. To the extent any response is required, Defendants deny the first sentence of Paragraph 84. Defendants admit that Treasury issued a press release on August 17, 2012 that contains the text quoted in the second and third sentences of Paragraph 84, and Defendants refer to that document for its contents. Defendants deny all allegations of Paragraph 84 not specifically admitted herein.

85. Answering Paragraph 85, Defendants state that this paragraph pertains to claims that were dismissed by this Court on September 30, 2014, which dismissal was affirmed by the D.C. Circuit on February 21, 2017 (with an opinion reissued on July 17, 2017), and thus does not require a response. To the extent any response is required, Defendants state they lack knowledge or information sufficient to form a belief regarding the allegations in the first through fourth sentences of Paragraph 85, and therefore deny those allegations. Defendants admit the existence of an Action Memorandum for Secretary Geithner dated December 20, 2010, and Defendants refer to that document for its contents. Defendants admit the existence of an Information Memorandum for Secretary Geithner dated January 4, 2011, and Defendants refer to that document for its contents. Defendants deny the fifth sentence of Paragraph 85.

86. Answering Paragraph 86, Defendants state that this paragraph pertains to claims that were dismissed by this Court on September 30, 2014, which dismissal was affirmed by the D.C. Circuit on February 21, 2017 (with an opinion reissued on July 17, 2017), and thus does not require a response. To the extent any response is required, Defendants admit that then Acting Director DeMarco testified before a Senate Committee on April 18, 2013, and Defendants refer to the transcript of that testimony for its contents. Defendants further admit that FHFA provided a 2012 report to Congress, and Defendants refer to that document for its contents. Defendants state that the allegations of the fourth textual sentence of Paragraph 86 constitute legal conclusions that do not require a response. To the extent any response is required, Defendants deny the fourth textual sentence of Paragraph 86.

87. Answering Paragraph 87, Defendants admit the existence of FHFA's Strategic Plan dated February 21, 2012, and Defendants refer to that document for its contents. Defendants state that the other allegations of the first sentence of Paragraph 87 constitute legal conclusions to which no response is required. Defendants further admit that it was reported by the Wall Street Journal that Director Watt made the statements quoted in the last sentence of Paragraph 87. Defendants deny all allegations of Paragraph 87 not specifically admitted herein.

88. Answering Paragraph 88, Defendants admit that Fannie Mae publicly stated in its 2014 Form 10-K that its board of directors is "not obligated to consider the interests of the company, [or] the holders of our equity or debt securities . . . unless specifically directed to do so by the conservator." Defendants further admit that it was reported by Forbes that Timothy Mayopoulos made the statements quoted in the second sentence of Paragraph 88, and Defendants refer to the Forbes report for its contents. Defendants deny all allegations of Paragraph 88 not specifically admitted herein..

89. Answering Paragraph 89, Defendants state they lack knowledge or information sufficient to form a belief regarding the allegations in the first sentence of Paragraph 89 and therefore deny those allegations. Defendants deny the second sentence of Paragraph 89.

90. Answering Paragraph 90, Defendants admit the first sentence of Paragraph 90. Defendants further admit that a declaration of Mario Ugoletti was part of the Document Compilation, and Defendants refer to that document for its contents. Defendants admit that e-mails among FHFA officials before the execution of the Third Amendment were produced in the CFC, and Defendants refer to those documents for their contents. Defendants further admit that Ms. McFarland and Mr. Ugoletti gave deposition testimony, and Defendants refer to the transcripts of those depositions for their contents.

91. Answering Paragraph 91, Defendants admit the existence of the Ugoletti declaration, and Defendants refer to that declaration for its contents. Defendants further admit the existence of a Treasury document that contains the text quoted in the second sentence of Paragraph 91, and Defendants refer to that document for its contents. Defendants admit that that Treasury memorandum was not included in FHFA's Document Compilation. Defendants deny all allegations of Paragraph 91 not specifically admitted herein.

92. Answering Paragraph 92, Defendants lack knowledge or information sufficient to form a belief regarding the allegations of the first sentence of Paragraph 92, and therefore deny those allegations. Defendants admit the second sentence of Paragraph 92. Defendants admit that Treasury submitted an administrative record, and Defendants refer to that record for its contents.

93. Answering Paragraph 93, Defendants admit that Treasury submitted an administrative record, and Defendants refer to that record for its contents. Defendants lack

knowledge or information sufficient to form a belief regarding the remaining allegations in Paragraph 93 and therefore deny those allegations.

94. Answering Paragraph 94, Defendants deny the first sentence of Paragraph 94. Defendants admit that Jeff Foster gave deposition testimony, and Defendants refer to the transcript of that deposition for its contents. Defendants lack knowledge or information sufficient to form a belief regarding the allegations in the third sentence of Paragraph 94 because Defendants are unable to identify the “notes” referred to in this sentence, and Defendants therefore deny those allegations. Defendants admit the existence of an e-mail to Mr. Ugoletti that contains the text quoted in the fourth sentence of Paragraph 94, and Defendants refer to that document for its contents. Defendants admit the existence of an internal Treasury document that contains the text quoted in the fifth sentence of Paragraph 94, and Defendants refer to that document for its contents. Defendants admit the existence of draft Treasury documents that contain the text quoted in the sixth and seventh sentences of Paragraph 94 and Defendants refer to those documents for their contents. Defendants deny all allegations of Paragraph 94 not specifically admitted herein.

95. Answering Paragraph 95, Defendants deny the first sentence of Paragraph 95. Defendants admit that the table included in Paragraph 95 accurately lists the approximate amount of dividends Fannie Mae and Freddie Mac paid from January 1, 2013 through the second quarter of 2017.

96. Answering Paragraph 96, Defendants admit that the Companies have paid Treasury over \$215 billion (combined) in dividends under the Third Amendment. Defendants state that the second and third sentences of Paragraph 96 and the chart included in Paragraph

96 contain hypothetical facts to which no response is required. Defendants deny all allegations of Paragraph 96 not specifically admitted herein.

97. Defendants deny Paragraph 97.

98. Answering Paragraph 98, Defendants admit that Fannie Mae's 2013 net income included the release of Fannie Mae's deferred tax assets valuation allowance. Defendants otherwise lack knowledge or information sufficient to form a belief regarding the remaining allegations of Paragraph 98 pertaining to Treasury, and therefore deny those allegations.

Defendants admit that the release of Fannie's valuation allowance indicated a belief that it was more likely than not that Fannie Mae would generate taxable income going forward. Defendants admit the third sentence of Paragraph 98. Defendants deny all allegations of Paragraph 98 not specifically admitted herein.

99. Defendants deny Paragraph 99.

100. Answering Paragraph 100, Defendants admit the second sentence of Paragraph 100. Defendants admit that no dividends were declared by Fannie Mae and Freddie Mac for payment to holders of preferred stock junior to the senior preferred stock held by Treasury.

Defendants state that the third and fourth sentences of Paragraph 100 contain hypothetical facts to which no response is required. Defendants deny all allegations of Paragraph 100 not specifically admitted herein.

101. Answering Paragraph 101, Defendants state that this paragraph pertains to a claim that was dismissed by this Court on September 28, 2018, and thus does not require a response.

To the extent any response is required, Defendants deny Paragraph 101.

102. Answering Paragraph 102, Defendants incorporate by reference the responses of all preceding paragraphs.

103. Answering Paragraph 103, Defendants state that this paragraph pertains to a claim that was dismissed by this Court on September 30, 2014, which dismissal was affirmed by the D.C. Circuit on February 21, 2017 (with an opinion reissued on July 17, 2017), and thus does not require a response.

104. Answering Paragraph 104, Defendants state that this paragraph pertains to a claim that was dismissed by this Court on September 30, 2014, which dismissal was affirmed by the D.C. Circuit on February 21, 2017 (with an opinion reissued on July 17, 2017), and thus does not require a response.

105. Answering Paragraph 105, Defendants state that this paragraph pertains to a claim that was dismissed by this Court on September 30, 2014, which dismissal was affirmed by the D.C. Circuit on February 21, 2017 (with an opinion reissued on July 17, 2017), and thus does not require a response.

106. Answering Paragraph 106, Defendants state that this paragraph pertains to a claim that was dismissed by this Court on September 30, 2014, which dismissal was affirmed by the D.C. Circuit on February 21, 2017 (with an opinion reissued on July 17, 2017), and thus does not require a response.

107. Answering Paragraph 107, Defendants state that this paragraph pertains to a claim that was dismissed by this Court on September 30, 2014, which dismissal was affirmed by the D.C. Circuit on February 21, 2017 (with an opinion reissued on July 17, 2017), and thus does not require a response.

108. Answering Paragraph 108, Defendants state that this paragraph pertains to a claim that was dismissed by this Court on September 30, 2014, which dismissal was affirmed by the

D.C. Circuit on February 21, 2017 (with an opinion reissued on July 17, 2017), and thus does not require a response.

109. Answering Paragraph 109, Defendants incorporate by reference the responses of all preceding paragraphs.

110. Answering Paragraph 110, Defendants state that this paragraph pertains to a claim that was dismissed by this Court on September 28, 2018, and thus does not require a response.

111. Answering Paragraph 111, Defendants state that this paragraph pertains to a claim that was dismissed by this Court on September 28, 2018, and thus does not require a response.

112. Answering Paragraph 112, Defendants state that this paragraph pertains to a claim that was dismissed by this Court on September 28, 2018, and thus does not require a response.

113. Answering Paragraph 113, Defendants state that this paragraph pertains to a claim that was dismissed by this Court on September 28, 2018, and thus does not require a response.

114. Answering Paragraph 114, Defendants state that this paragraph pertains to a claim that was dismissed by this Court on September 28, 2018, and thus does not require a response.

115. Answering Paragraph 115, Defendants state that this paragraph pertains to a claim that was dismissed by this Court on September 28, 2018, and thus does not require a response.

116. Answering Paragraph 116, Defendants incorporate by reference the responses of all preceding paragraphs.

117. Answering Paragraph 117, Defendants state that the allegations of this paragraph constitute legal conclusions to which no response is required.

118. Answering Paragraph 118, Defendants state that the allegations of this paragraph constitute legal conclusions to which no response is required. To the extent a response is required, Defendants admit the first sentence of Paragraph 118 and further state that the

Conservator has succeeded to all rights of the stockholders of Fannie Mae and Freddie Mac. To the extent a response is required, Defendants also admit that Plaintiffs' preferred stock certificates of designation generally provide for dividends "if declared by the Board of Directors, in its sole discretion," and provide for liquidation preferences under certain circumstances.

119. Answering Paragraph 119, Defendants state that the allegations of this paragraph constitute legal conclusions to which no response is required. To the extent a response is required, Defendants deny the first and third sentences of Paragraph 119, admit that the Third Amendment (among other things) replaced a fixed 10% dividend with a variable dividend based on net worth, and Defendants refer to the Third Amendment for its contents. Defendants otherwise deny all allegations of Paragraph 119 not specifically admitted herein.

120. Answering Paragraph 120, Defendants state that the allegations of this paragraph constitute legal conclusions to which no response is required. To the extent a response is required, Defendants deny Paragraph 120.

121. Answering Paragraph 121, Defendants state that the allegations of this paragraph constitute legal conclusions to which no response is required. To the extent a response is required, Defendants deny Paragraph 121.

122. Answering Paragraph 122, Defendants state that the allegations of this paragraph constitute legal conclusions to which no response is required. To the extent a response is required, Defendants deny Paragraph 122.

123. Answering Paragraph 123, Defendants incorporate by reference the responses of all preceding paragraphs.

124. Answering Paragraph 124, Defendants state that this paragraph pertains to a claim that was dismissed by this Court on September 30, 2014, which dismissal was affirmed by the

D.C. Circuit on February 21, 2017 (with an opinion reissued on July 17, 2017), and also by this Court's opinion on September 28, 2018, and thus does not require a response.

125. Answering Paragraph 125, Defendants state that this paragraph pertains to a claim that was dismissed by this Court on September 30, 2014, which dismissal was affirmed by the D.C. Circuit on February 21, 2017 (with an opinion reissued on July 17, 2017), and also by this Court's opinion on September 28, 2018, and thus does not require a response.

126. Answering Paragraph 126, Defendants state that this paragraph pertains to a claim that was dismissed by this Court on September 30, 2014, which dismissal was affirmed by the D.C. Circuit on February 21, 2017 (with an opinion reissued on July 17, 2017), and also by this Court's opinion on September 28, 2018, and thus does not require a response.

127. Answering Paragraph 127, Defendants state that this paragraph pertains to a claim that was dismissed by this Court on September 30, 2014, which dismissal was affirmed by the D.C. Circuit on February 21, 2017 (with an opinion reissued on July 17, 2017), and also by this Court's opinion on September 28, 2018, and thus does not require a response.

128. Answering Paragraph 128, Defendants state that this paragraph pertains to a claim that was dismissed by this Court on September 30, 2014, which dismissal was affirmed by the D.C. Circuit on February 21, 2017 (with an opinion reissued on July 17, 2017), and also by this Court's opinion on September 28, 2018, and thus does not require a response.

129. Answering Paragraph 129, Defendants state that this paragraph pertains to a claim that was dismissed by this Court on September 30, 2014, which dismissal was affirmed by the D.C. Circuit on February 21, 2017 (with an opinion reissued on July 17, 2017), and also by this Court's opinion on September 28, 2018, and thus does not require a response.

130. Answering Paragraph 130, Defendants state that this paragraph pertains to a claim that was dismissed by this Court on September 30, 2014, which dismissal was affirmed by the D.C. Circuit on February 21, 2017 (with an opinion reissued on July 17, 2017), and also by this Court's opinion on September 28, 2018, and thus does not require a response.

131. Answering Paragraph 131, Defendants state that this paragraph pertains to a claim that was dismissed by this Court on September 30, 2014, which dismissal was affirmed by the D.C. Circuit on February 21, 2017 (with an opinion reissued on July 17, 2017), and also by this Court's opinion on September 28, 2018, and thus does not require a response.

132. Answering Paragraph 132, Defendants state that this paragraph pertains to a claim that was dismissed by this Court on September 30, 2014, which dismissal was affirmed by the D.C. Circuit on February 21, 2017 (with an opinion reissued on July 17, 2017), and also by this Court's opinion on September 28, 2018, and thus does not require a response.

133. Answering Paragraph 133, Defendants incorporate by reference the responses of all preceding paragraphs.

134. Answering Paragraph 134, Defendants state that this paragraph pertains to a claim that was dismissed by this Court on September 28, 2018, and thus does not require a response.

135. Answering Paragraph 135, Defendants state that this paragraph pertains to a claim that was dismissed by this Court on September 28, 2018, and thus does not require a response.

136. Answering Paragraph 136, Defendants state that this paragraph pertains to a claim that was dismissed by this Court on September 28, 2018, and thus does not require a response.

137. Answering Paragraph 137, Defendants state that this paragraph pertains to a claim that was dismissed by this Court on September 28, 2018, and thus does not require a response.

138. Answering Paragraph 138, Defendants state that this paragraph pertains to a claim that was dismissed by this Court on September 28, 2018, and thus does not require a response.

139. Answering Paragraph 139, Defendants incorporate by reference the responses of all preceding paragraphs.

140. Answering Paragraph 140, Defendants state that this paragraph pertains to a claim that was dismissed by this Court on September 28, 2018, and thus does not require a response.

141. Answering Paragraph 141, Defendants state that this paragraph pertains to a claim that was dismissed by this Court on September 28, 2018, and thus does not require a response.

142. Answering Paragraph 142, Defendants state that this paragraph pertains to a claim that was dismissed by this Court on September 28, 2018, and thus does not require a response.

143. Answering Paragraph 143, Defendants state that this paragraph pertains to a claim that was dismissed by this Court on September 28, 2018, and thus does not require a response.

Answering the Prayer for Relief, Defendants deny each and every allegation contained in the Prayer for Relief and deny that Plaintiffs are entitled to any relief whatsoever.

Defendants deny each and every allegation of the Complaint not specifically admitted in Defendants' responses to Paragraphs 1-143 and the Prayer for relief.

Further, the Complaint contains section headings that do not require a response. To the extent any response is required, Defendants deny all allegations in all section headings.

AFFIRMATIVE DEFENSES

Defendants assert the following affirmative defenses without admitting any of the allegations in the Complaint that have previously been denied, without assuming any burden of proof that Defendants would not otherwise bear, and reserving the right to amend or supplement these affirmative defenses and raise counterclaims as additional facts become available or apparent in this action:

First Affirmative Defense

Some or all of Plaintiffs' claims fail to state a claim upon which relief can be granted.

Second Affirmative Defense

Some or all of Plaintiffs' claims (including claims for money damages) are barred because they seek relief that would "restrain or affect the exercise of powers or functions of the [Federal Housing Finance] Agency as a conservator" within the meaning of 12 U.S.C. § 4617(f).

Third Affirmative Defense

Some or all of Plaintiffs' claims are preempted and/or barred in whole or in part by federal law.

Fourth Affirmative Defense

Plaintiffs' claims are barred in whole or in part because they seek to recover for alleged anticipatory repudiation of implied covenant obligations attendant to a unilateral contract.

Fifth Affirmative Defense

Plaintiffs' claims are barred in whole or in part because Defendants performed all duties owed under the implied covenant of good faith and fair dealing and therefore never breached the implied covenant.

Sixth Affirmative Defense

Plaintiffs' claims fail in whole or in part to the extent Plaintiffs purchased their stock after the alleged wrongdoing occurred.

Seventh Affirmative Defense

Plaintiffs' claims are barred in whole or in part because Plaintiffs suffered no actual injury.

Eighth Affirmative Defense

Plaintiffs' claims are barred in whole or in part because Plaintiffs were not harmed by, or have no recoverable damages caused by, any alleged actions or omissions by Defendants.

Ninth Affirmative Defense

Plaintiffs' claims fail in whole in part because at least a portion of Plaintiffs' alleged damages are based on intervening or supervening causes.

Tenth Affirmative Defense

Plaintiffs' claims are barred in whole or in part by the doctrine of estoppel.

Eleventh Affirmative Defense

Plaintiffs' claims are barred in whole or in part by the doctrine of waiver.

Twelfth Affirmative Defense

Plaintiffs' claims are barred in whole or in part by the doctrine of laches.

Thirteenth Affirmative Defense

Plaintiffs' claims are barred in whole or in part by the doctrine of assumption of risk.

Fourteenth Affirmative Defense

Plaintiffs' claims are barred in whole or in part by failure to mitigate damages.

Reservation of Defenses

Defendants presently have insufficient knowledge or information on which to form a belief as to whether it may have additional, as yet unstated, affirmative defenses available. Defendants reserve the right to assert additional defenses in this action in the event that discovery or other developments indicate that they would be appropriate.

PRAYER

Having fully answered the Complaint, Defendants respectfully pray as follows:

1. That the Complaint be dismissed with prejudice in its entirety;
2. That judgment be entered in favor of Defendants and against Plaintiffs on the Complaint as a whole;
3. That Defendants be awarded attorneys' fees, costs, and disbursements in this action;
4. That the Court award Defendants such other and further relief as the Court may deem appropriate.

Dated: December 17, 2018

Respectfully submitted,

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