

No. 20-02025

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

CYNTHIA BOSS,
Plaintiff-Appellee

v.

FEDERAL NATIONAL MORTGAGE ASSOCIATION,
FEDERAL HOUSING FINANCE AGENCY,
Defendants-Appellants,

SANTANDER BANK, N.A.

Defendant.

On Appeal from the United States District Court
for the District of Rhode Island

UNOPPOSED MOTION TO COORDINATE APPEALS

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RULE 26.1 DISCLOSURE STATEMENT

Federal National Mortgage Association (“Fannie Mae”) is a government-sponsored enterprise chartered by the United States Congress, and is currently under conservatorship of the Federal Housing Finance Agency. Fannie Mae does not have a parent corporation and no publicly held corporation owns ten percent or more of its stock.

The Federal Housing Finance Agency certifies that it is not a publicly held corporation, has no parent corporation, and does not issue stock.

Appellants the Federal National Mortgage Association (“Fannie Mae”) and the Federal Housing Finance Agency (“FHFA”), in its role as Fannie Mae’s Conservator, respectfully seek to have the above-captioned appeal coordinated (i.e., heard by the same panel on the same day) with *Sisti v. Freddie Mac*, Case No. 20-02026 (1st Cir.), and *Montilla v. Fannie Mae*, No. 20-01673 (1st Cir.), for purposes of oral argument. Because Appellants here (Fannie Mae and FHFA), are the appellees in *Montilla*, the parties seek to coordinate rather than consolidate the cases.¹ Coordination of the appeals for purposes of oral argument threatens no prejudice and would result in significant efficiencies. In support of this motion, Fannie Mae and FHFA state as follows:

1. All parties in *Boss*, *Sisti*, and *Montilla* agree to the coordination.
2. The central legal issue in each case is the same: whether Fannie Mae (in *Boss* and *Montilla*), Freddie Mac (in *Sisti*), and FHFA (in *Boss*, *Sisti*, and *Montilla*) violated the Fifth Amendment’s procedural due process requirements by foreclosing on the plaintiffs’ property under Rhode Island’s non-judicial foreclosure statute.
3. *Boss* and *Sisti* are at the same procedural stage, as they were recently docketed; the opening brief in *Montilla* is due on November 23, 2020. To assist

¹ If it is more convenient for the Court, the parties do not object to consolidating the *Boss* and *Sisti* appeals, then coordinating the consolidated appeals with *Montilla*.

with coordinating briefing schedules, Fannie Mae and FHFA will seek a briefing schedule (in coordination with *Sisti*) that aligns with the *Montilla* appeal, such that the opening brief in *Boss* and *Sisti* will also be due on November 23.

4. Further, FHFA, a party in each appeal, will argue the issue of whether FHFA, Fannie Mae, and Freddie Mac are government actors for constitutional purposes for all three cases.

5. Because these appeals present the same core legal question, hearing the cases together for purposes of argument will avoid the inefficiency of duplicative oral arguments, will conserve the Court's resources by not having separate panels of this Court consider the same legal issue, and will ensure that this Court does not render conflicting opinions.

6. This Court and other circuit courts have consolidated cases for purposes of oral argument, similar to what Fannie Mae and FHFA seek here. *See, e.g., United States v. Laureano-Salgado*, 933 F.3d 20, 23 n.4 (1st Cir. August 2, 2019) (Appellants “filed separate appeals. But we consolidated them for purposes of oral argument only (they submitted separate briefs).”); *Kwan v. SanMedica Int'l*, 854 F.3d 1088, 1091 (9th Cir. 2017) (“For purposes of oral argument only, we consolidated this appeal with the appeal in *Julian Engel v. Novex Biotech, LLC*, No. 15–15492.”); Order, *Pauley v. CF Entertainment*, Case No. 14-55131 (9th Cir. Jan. 22, 2016), ECF No. 63 (“This consolidation is for the purposes of oral

argument only; the cases shall otherwise remain two separate appeals.”); *United States v. Mills*, 613 F.3d 1070, 1071 n.1 (11th Cir. 2010) (noting same).

CONCLUSION

For the reasons stated above, Fannie Mae and FHFA respectfully request that the Court issue an order coordinating this appeal with *Sisti v. Freddie Mac*, Case No. 20-02026, and *Montilla v. Fannie Mae*, Case No. 20-01673, such that the appeals are heard by the same panel on the same day.

DATED: November 13, 2020

Respectfully Submitted:

s/ Michael A.F. Johnson
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CERTIFICATE OF SERVICE

I hereby certify that on November 13, 2020, I caused the foregoing UNOPPOSED MOTION TO COORDINATE APPEALS to be electronically filed via the Court's CM/ECF System, causing a true and correct copy to be served upon all counsel of record who are registered CM/ECF users.

s/ Michael A. F. Johnson
Michael A.F. Johnson