

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

<p>FAIRHOLME FUNDS, INC., <i>et al.</i>,</p> <p>Plaintiffs,</p> <p>v.</p> <p>THE FEDERAL HOUSING FINANCE AGENCY, <i>et al.</i>,</p> <p>Defendants.</p>	<p>Civil No. 13-1053 (RCL)</p>
<p>ARWOOD INDEMNITY COMPANY, <i>et al.</i>,</p> <p>Plaintiffs,</p> <p>v.</p> <p>FEDERAL NATIONAL MORTGAGE ASSOCIATION, <i>et al.</i>,</p> <p>Defendants.</p>	<p>Civil No. 13-1439 (RCL)</p>
<p>In re Fannie Mae/Freddie Mac Senior Preferred Stock Purchase Agreement Class Action Litigations</p> <p>_____</p> <p>This document relates to: ALL CASES</p>	<p>Miscellaneous No. 13-1288 (RCL)</p>

**JOINT MOTION TO ADJOURN FOURTH AMENDED SCHEDULING ORDER
DEADLINES**

Plaintiffs in the above-captioned actions (collectively, “Plaintiffs”), as well as Defendants Federal Housing Finance Agency (“FHFA”), FHFA Director Mark A. Calabria, the Federal National Mortgage Association, and the Federal Home Loan Mortgage Corporation (collectively,

“Defendants”), hereby move the Court for entry of an order adjourning the deadlines in the Fourth Amended Scheduling Order entered by the Court on January 19, 2021.

By order dated May 9, 2020, this Court adjourned the deadlines established by the Second Amended Scheduling Order, entered on December 23, 2019, and directed the parties to submit a proposed revised scheduling order to account for the disruptions created by the COVID-19 pandemic. After considering the submissions of the parties, on July 1, 2020, this Court entered the Third Amended Scheduling Order, which provided a deadline for the completion of fact discovery on January 22, 2021, and a trial date of May 16, 2022.

Following the entry of the Third Amended Scheduling Order, the parties engaged in discovery in an effort to meet the deadlines established in that Order. However, due in part to recent productions of documents (including by the United States Department of the Treasury in December 2020) and the restrictions imposed by the state and local authorities in response to the ongoing pandemic, the parties believed it necessary to further revise the schedule in order to complete all of the remaining depositions by the January 22, 2021 deadline. After considering the submissions of the parties, on January 19, 2021, this Court entered the Fourth Amended Scheduling Order, which provided, *inter alia*, a deadline for the completion of fact discovery on March 26, 2021, the production of Plaintiffs’ expert witness reports by June 18, 2021, and a trial date of May 16, 2022.

The parties now believe that it is appropriate to adjourn all deadlines established by the Fourth Amended Scheduling Order in order for the parties to have time to address an upcoming decision by the U.S. Supreme Court in *Collins v. Mnuchin*, No. 19-422 (“*Collins*”) and to accommodate the schedules of witnesses who are not available for deposition before the current deadline to complete fact discovery. The parties believe that the Supreme Court’s decision in

Collins may impact fact and expert discovery in this case, causing Plaintiffs to consider taking depositions of additional witnesses, and potentially calling for the parties' respective experts to address the decision in their expert reports. An adjournment of all deadlines will enable the parties to complete fact discovery, prepare expert reports, and complete expert depositions (and other deadlines) in an orderly fashion, and allow the parties to complete all remaining tasks without placing an unnecessary burden on the parties or the Court.

On December 9, 2020, the United States Supreme Court heard oral argument in *Collins*. That case was initiated by shareholders of the Federal Home Loan Mortgage Corporation and the Federal National Mortgage Association challenging the constitutionality of FHFA's structure as well as the 2012 agreement that the FHFA entered with the Treasury Department, known as the "Third Amendment" or the "Net Worth Sweep" which is also the subject of this case. The Supreme Court is expected to issue a decision in that case no later than June. That decision may result in Plaintiffs determining that one or more additional witnesses must be deposed. Moreover, as noted above, the parties believe that their respective experts may need to develop their reports based in part on the Supreme Court's decision in *Collins*.

Even putting aside the impending decision in *Collins*, the parties need additional time to complete certain depositions and related motion practice. The parties have worked diligently to complete all fact discovery, as Plaintiffs took three depositions (all remotely) in December 2020, and Defendants likewise took three depositions (in January and February 2021). Defendants have noticed depositions of plaintiffs that, to accommodate witness schedules, are scheduled to occur after the current deadline in the Fourth Amended Scheduling Order. The Treasury Department made additional productions of documents on January 4, 2021 and January 20, 2021. Plaintiffs need additional time to review those productions, determine whether additional depositions are

needed and, if necessary, file motions challenging privilege designations. Additional time after the current fact discovery deadline will be needed to complete such motion practice and take the additional depositions, if necessary.

Accordingly, the parties have agreed that all deadlines in the Fourth Amended Scheduling Order should be adjourned. The parties further agree that within two weeks of the Supreme Court's decision in *Collins*, the parties will meet and confer to set a schedule for fact and expert discovery, and all remaining deadlines. This schedule will be submitted to the Court no later than three weeks following the Supreme Court's decision.

The Parties agree that Defendants may take the depositions they have already scheduled and Plaintiffs may seek to take up to three additional fact depositions consistent with the parties' discussions regarding the scope of additional depositions Plaintiffs are considering, related to the issues identified above and that the potential deponents reserve all objections to any such deposition other than an objection on the ground that it will be conducted after the previously scheduled end of fact discovery of March 26, 2021, as set forth in the Fourth Amended Scheduling Order

The parties believe this proposal for an adjournment is preferable to an amendment setting new dates for fact and expert discovery because it tailors the extension of deadlines to the Supreme Court's decision in *Collins*, avoids the potential need for multiple additional adjustments to the schedule, and thereby allows for a proper and efficient administration of justice.

Dated: March 26, 2021

Respectfully submitted,

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