UNITED STATES COURT OF FEDERAL CLAIMS

JOSHUA J. ANGEL, Plaintiff, v. THE UNITED STATES, Defendant.	)))))))))	No. 23-CV-800 (Senior Judge Margaret M. Sweeney)

PLAINTIFF'S MOTION FOR LEAVE TO AMEND THE COMPLAINT

Pursuant to Rule 15(a)(2) of the Rules of the United States Court of Federal Claims, Plaintiff Joshua J. Angel ("Plaintiff" or "Angel") respectfully requests that the Court (a) grant Plaintiff leave to amend his complaint in the form submitted herewith at Exhibit A, and (b) suspend Plaintiff's time to respond to the Government's pending motion to dismiss the complaint to the date 30 days after the Court resolves Plaintiff's motion to amend. This is Plaintiff's first request in this proceeding to amend his complaint.

PROCEDURAL BACKGROUND

Plaintiff sent a copy of his proposed amended complaint to counsel for the Government on January 25, 2024 along with his request that the Government consent to the filing of the amended complaint. A copy of Angel's letter is submitted herewith as Exhibit B. On January 29, 2024, counsel for the government replied by email, stating "The United States opposes as futile your motion for leave to amend the complaint." A copy of this email is submitted herewith as Exhibit C.

Accordingly, Plaintiff respectfully submits this motion.

Plaintiff commenced this action through filing a complaint on June 1, 2023 ("Angel IV" and the "Angel IV Complaint"). On October 13, 2023, the United States filed a motion to

dismiss pursuant to Rules 12(b)(1) and (6) (the "Motion to Dismiss"). On January 23, 2024, this Court denied Plaintiff's motion for leave to take discovery before responding to the Motion to Dismiss. Plaintiff's response to the Motion to Dismiss is currently due on February 20, 2024.

Plaintiff has determined that modest amendments to his original Angel IV Complaint in response to the Motion to Dismiss are warranted. The rationale for these amendments in the context of the original Angel IV Complaint is discussed below.

LEGAL STANDARD

Pursuant to Rule 15(a)(2), "[t]he court should freely give leave [to amend] when justice so requires." The Supreme Court has emphasized that "this mandate is to be heeded." *Foman v. Davis,* 371 U.S. 178, 182 (1962); *see also, e.g., U.S. ex rel D'Agostino v. EV3, Inc.*, 802 F.3d 188, 192 (1st Cir. 2015). Granting leave to amend is within the sound discretion of the Court. *See, e.g., John Hancock Mut. Fife Ins. Co. v. Amerford Int'l Corp.,* 22 F.3d 458, 462 (2d Cir. 1994). In assessing whether to grant leave to amend, courts will consider factors such as "undue delay, bad faith, futility, and the absence of due diligence on the movant's part." *Palmer v. Champion Mortg.*, 465 F.3d 24, 30 (1st Cir. 2006).

None of the factors contrary to freely granting leave to amend are present here. While there has been some preliminary motion practice in this case, in substance this matter is still at a the very earliest stage. There is the Motion to Dismiss pending but not yet fully briefed. Plaintiff has demonstrated diligence in pursuing his claims. As discussed below, Plaintiff's proposed amendments are based at least in part on newly discovered evidence, allegations concerning which should be considered by the Court before a substantive decision. Justice requires the substantive decision on Plaintiff's claims to be based on the fullest possible set of allegations, and therefore argues in favor of granting leave to amend.

LEAVE TO AMEND SHOULD BE GRANTED

The Angel IV Complaint conflated claims of illegal exaction with claims of illegal extraction. The proposed amendment de-conflates the claims. Plaintiff's claim of illegal exaction

is bottomed on the exercise of the SPSPA's Third Amendment's "Net Worth Sweep" in a manner that treated Junior Preferred Share contract dividend rights as GSE profits for the immediately preceding quarter that were to be paid to Treasury. Plaintiff's claim of illegal extraction is bottomed on the inclusion of the proceeds obtained by the GSEs from of the FHFA's litigation on behalf of the GSEs against defendant mortgage originators who had violated federal securities laws in the sale of $200 billions of defective residential private label mortgage backed securities ("MBS") to the GSEs (the "Private Label MBS Actions") as profits to be swept up and paid to Treasury pursuant to the Net Worth Sweep provisions of the SPSPA Third Amendment. The proposed amendments to the Angel IV complaint, namely: a) deletion of FN 6 following paragraph 19; b) clarification of the heading of Count II to reflect that it contains allegations of both illegal exaction and illegal extraction, and; c) addition of subparagraphs (a) and (b) to paragraph 79 to respectively set forth the allegations of illegal exaction and illegal extraction.

A. SPSPA Third Amendment In General

On August 17, 2012, Treasury and FHFA, on behalf of the GSEs, entered into the Third Amendment to the SPSPAs, effective as of January 1, 2013. The Third Amendment included a definitional "Net Worth Sweep" provision. Beginning January 1, 2013, the provision required quarterly dividend payments to Treasury, equal to each GSE's profit for the immediately preceding company fiscal quarter. The Third Amendment was designed to, and in fact did, eliminate the further buildup of GSE's capital beyond December 31, 2012.

Plaintiff contends that neither HERA, nor the Third Amendment contain any provision that would include, without intervening action by the Board of Directors as past quarter profits for Net Worth Sweep purpose of Fannie, Freddie share assets including, but not limited to Junior Preferred share contract dividend rights and Private Label MBS Action litigation proceeds. Defendant claims that the Court has addressed Plaintiff's claim that Junior Preferred share contract dividend rights were not meant to be included in Net Worth Sweep past quarter profits.

However Plaintiff believes that the inclusion of Private Label MBS Action litigation proceeds from Net Worth Sweep past quarter profits remains an open question.

B. Private Label MBS Actions

On September 2, 2011, the FHFA as GSE's conservator filed lawsuits in Fannie's and Freddie's names and behalf, against a bevy of financial institutions, alleging, *inter alia*, the institutions' violation of federal securities laws, in the sale of $200 billion of defective residential private label MBS to the GSEs (the "Private Label MBS Actions"). The GSEs' financial statements reflected of the suits' filing, and approximately $36 billion in settlement proceeds garnered between 2013 and 2023.

Apparently, as obtained by FHFA counsel, the proceeds recovered in the Private Label MBS Actions were remitted to the Companies, reflected as profit on their respective financial statements as received, and in requisite time thereafter essentially remitted by each Company to Treasury pursuant to the next quarterly Net Worth Sweep.

Initially thought to total just $25 billion, and time-barred as Net Worth Sweep 2013-2016 illegal extractions outside *Angel IV* June 1, 2017 statute of limitations date, the *Angel IV* Complaint at footnote 6 excluded Defendant Private Label MBS Actions litigation proceeds recovered from 2013-2016 from his illegal extraction complaint damage demand.

However, at the end of August 2023, Plaintiff discovered a press release dated August 14, 2023, issued by the U.S. Attorney for the Eastern District New York stating that the office had finalized the disposition of and recovered $36 billion in Private Label MBS $36 Actions from 2013 through 2023). Thereafter, Plaintiff's counsel sent a letter to the Office of the United States Attorney for the Eastern District of New York asking the office to provide him with a list of the Private Label MBS actions in which proceeds were recovered and remitted to FHFA or the GSEs – and the amount of such proceeds -- from June 1, 2017, to date. A copy of the letter, as well as a separate letter making a similar request was sent to the attorney for Defendant in this case. No response to either letter has been received. Copies of the letters to the US Attorney for the

Eastern District of New York and to counsel for the Government in this case are submitted herewith as Exhibits D and E, respectively.

CONCLUSION

Last week, Plaintiff solicited the Government's consent to the proposed amendment in the hope of avoiding the unnecessary expenditure of precious judicial resources. Regretfully, the Government has withheld its consent. Accordingly, Plaintiff is constrained to request the Court to delay the date on which its papers opposing the pending motion to dismiss are to be filed until thirty (30) days after the within motion has been determined.

Dated: January 29, 2024

JOSHUA J. ANGEL PLLC

/s/Joshua J. Angel
By: Joshua J. Angel

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EXHIBIT A

UNITED STATES COURT OF FEDERAL CLAIMS

Joshua J. Angel, on behalf of himself and all others similarly situated, Plaintiff, v. THE UNITED STATES, Defendant	No. 23-800C

CLASS ACTION COMPLAINT

Joshua J. Angel ("Plaintiff"), on behalf of himself, and all other similarly situated owners of non-cumulative preferred shares of the Federal National Mortgage Association ("Fannie Mae"), and/or the Federal Home Loan Mortgage Corporation ("Freddie Mac," and collectively with Fannie Mae, the "GSEs," "Fannie/Freddie," or the "Companies"), brings this class action complaint ("Complaint") against the United States due to the United States Department of Treasury's ("Treasury"), (a) breaching its guaranty of contractual obligations created under the Companies' non-cumulative preferred share ("Junior Preferred") certificates of designation ("CODs"), (b) breaching the federal government's Implicit Guaranty of Fannie Mae, Freddie Mac Junior Preferred quarterly dividend rights, by directing shareholder dividend entitlement to Treasury Senior Preferred shares, (c) breaching HERA federal agency GSE statutory authorization for Companies' administration, in continuous illegal extractive actions, of quarterly sweep of approximately $500 million, January 1, 2013 to date, company funds which by contract should have remained with the GSEs for post-conservatorship dividend payment to Junior Preferred shareholders, (d) breaching the 2022 agreement to settle Angel v. United States No. 20-737C ("*Angel II* Settlement Agreement") unjustly, and (e) declaratory relief finding of, (i) federal

government Implicit Guaranty of Junior Preferred legal obligations timely payment, and (ii) Junior Preferred share permanent impairment, rendering the shares mandatorily redeemable at conservatorship, and/or case end [1],[2] Plaintiff alleges the following based on personal knowledge or information and belief. Plaintiff's information and belief are based on, inter alia, public documents and testimony (including sources identified in Angel v. United States, No. 1:20-CV-737, *Angel v. United States*, No. 22-867, and other actions and court filings), speeches, studies, books, and Plaintiff's and its counsel's investigation.

I. INTRODUCTION

1. Plaintiff brings this action on behalf of himself and all other holders of Junior Preferred shares of either or both Fannie Mae and Freddie Mac, issued prior to September 6, 2008 (the "Class"). Plaintiff, on behalf of himself and the Class, seeks to recover damages emanating from Treasury's: (a) quarterly breaching of COD Junior Preferred legal obligations, (b) quarterly breaches of the federal government Implicit Guaranty of Fannie Mae/Freddie Mac contractually mandated quarterly dividend rights, by directing shareholder dividend entitlement, to Treasury "Senior Preferred" shares in unjust Treasury enrichment, (c) breaching HERA federal agency GSE statutory authorization, for Companies' administration in continuous quarterly illegal extractive sweep of approximately $500 million, 2013 to date, GSE's funds which by contract should have remained with the GSEs for post-conservatorship dividend payment to Junior Preferred

[1] The GSE's also issued preferred share securities to Treasury that are, in certain respects, superior to the Junior Preferred. Treasury, the sole shareholder of such superior shares ("Senior Preferred") is excluded from the Class as defined below.

[2] Illegal extraction in Federal Court decisional invocation of major questions doctrine recitation, as federal administrative agency need, to point to "clear congressional authorization" when claiming power to make decision of "vast economic and political significance." See West Virginia v. EPA, Supreme Court, June 30, 2022. Treasury inability to point to HERA statute, or other authority, for quarterly illegal extraction of approximately $500 million of Junior Preferred share dividend entitlement beginning January 1, 2013 to date being case in point.

shareholders, (d) breaching the 2022 Angel Settlement Agreement unjustly, and (e) declaratory relief findings of (i) federal government Implicit Guaranty of Junior Preferred legal obligations of timely payment, and (ii) Junior Preferred share permanent impairment, renderings the shares mandatorily redeemable at conservatorship, and/or case end.

2. Fannie/Freddie Junior Preferred CODs are contracts, creating contract rights in Plaintiff and contract obligations in Defendant, **by reason of the terms thereof, and by reason of the Defendant's guaranty of timely payment of Junior Preferred share legal obligations**, including but not limited to, (a) cumulative dividends payable at CODs' specific payment dates, (b) legally declared dividends payable at board of directors ("BOD") specified payment dates, and (c) share principal face amounts payable at COD Junior Preferred specified maturity, and mandatorily redeemable at conservatorship termination, in event of then uncured impairment.

3. More specifically, the CODs require the Companies' respective BODs, to make reasonable, good-faith determinations in their "sole discretion" every fiscal quarter as to whether to declare a dividend payment on the Junior Preferred shares.

Senior Preferred Stock Purchase Agreement

4. On September 6, 2008, attendant to the financial crisis, Fannie Mae and Freddie Mac were placed into conservatorship, and the Conservator, the Federal Housing Finance Administration ("FHFA"), on behalf of each GSE, entered into identical Senior Preferred Stock Purchase Agreements ("SPSPAs") with Treasury, pursuant to which the GSEs each issued Senior Preferred shares to Treasury.

5. Federal Government GSEs conservatorship announcements September 6, 2008:

A. Treasury Secretary, Henry M. Paulson, Jr.:

"These Preferred Stock Purchase Agreements 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 posed by the scale and breadth of the holdings of GSE debt and MBS.

Market discipline is best served when shareholders bear both the risk and the reward of their investment. While conservatorship does not eliminate the common stock, it does place common shareholders last in terms of claims on the assets of the enterprise.

Similarly, conservatorship does not eliminate the outstanding preferred stock, but does place preferred shareholders second, after the common shareholders, in absorbing losses. 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 hold common or preferred shares of these two GSEs, only a limited number of smaller institutions have holdings that are significant compared to their capital."

B. FHFA Director, James Lockhart:

"... in order to conserve over $2 billion in capital every year, [payment of] 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."

6. Neither Secretary Paulson's nor Director Lockhart's September 6th statements, nor SPSPA specific language served to eliminate, or attempted to eliminate the federal government guaranty of timely payment of Fannie, Freddie obligations created by reason of the guaranty being in privity with Fannie Mae and Freddie Mac preferred share CODs, from the instant of the shares' initial marketing as "government securities."

7 Board of Directors' obligations to make reasonable, good-faith determinations in their "sole discretion" every fiscal quarter as to whether or not to declare Junior Preferred share dividend payments, or to "declare or pay any dividend" were undisturbed in 2008 SPSPA §5.1's enactment, except in suspension of duties for SPSPA term of financing and directors' otherwise

having to obtain Treasury "prior written consent" before the GSEs could "declare or pay any dividend," or "set aside any amount for any such purpose."

8. Such accumulation being in quarterly reduction of Companies profits under generally accepted accounting principles ("GAAP"), being quarterly in automatic reduction of profit, irrespective of declaration.[3]

9. While the SPSPA's requirement of Treasury's "prior written consent" modified the GSEs' procedure regarding the declaration and payment of Junior Preferred dividends, the SPSPAs neither eliminated, nor amended Junior Preferred substantive contractual obligations. See, e.g., Series Q, § 2(a).[4] Similarly, The SPSAs did not eliminate the federal government Implicit Guaranty of Junior Preferred legal obligations of timely payment, of legally declared equity share (i.e., common, and preferred) dividends.

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[3] "Under the SPSPAs, Treasury's financial support is in the form of an equity investment in the Enterprises [i.e., Fannie Mae, Freddie Mac]. The investment is not in common stock, but rather in senior preferred stock. Preferred stock is typically regarded as a hybrid instrument in that it has some features like bonds and others like common stock. Preferred stock is an equity interest, like common stock. However, like a bond, it usually does not confer voting rights, and offers a liquidation preference. A liquidation preference gives the preferred shareholder the right, in the event that the company is dissolved, to receive compensation for its preferred stock typically before common stockholders (but not before bondholders). Senior preferred stock has priority in payment order over other preferred stock. A dividend, should one be paid under the terms of preferred stock, is typically a quarterly payment based on a specified rate applied to the par amount of preferred stock held." White Paper: FHFA-OIG's Analysis of the 2012 Amendments to the Senior Preferred Stock Purchase Agreements, 7 (Mar. 20, 2013), https://www.fhfaoig.gov/Content/Files/WPR-2013-002_2.pdf (emphasis omitted).

GSE Senior Preferred share dividends being cumulative, and Junior Preferred share dividend declaration and payment SPSPA contractually suspended, Company and director directorial discretion with regard to Senior Preferred quarterly dividend declaration and payment evolved to a sole question of cash availability. However, when the third amendment to the SPSPA (the "Third Amendment" unilaterally changed the Senior Preferred dividend entitlement from 10% annual payable quarter annually to a quarterly sweep of all profits, attendant to the GSEs' year-end 2012 capital surplus being fixed at approximately $223 billion (i.e., Junior Preferred $33 billion, Senior Preferred $189 billion), revived directors' duty to consider, and seek Treasury written approval for Junior Preferred share dividend declaration without payment, under general corporate law, in tandem with duty to calculate quarterly profit available for Net Worth Sweep.

[4] Junior Preferred shares being contractually bilateral, required shareholder consent for effective amendment. Any purported amendment of the CODs by way of unilateral SPSPA provision, other than within the CODs' circumscribed grounds, would be both unlawful and invalid.

10. On August 17, 2012, attendant to the GSEs return to yearly profitability, Treasury, and FHFA, on behalf of the GSEs, entered into the Third Amendment to the SPSPAs, effective as of January 1, 2013.

11. The Third Amendment included a definitional "Net Worth Sweep" provision which, beginning January 1, 2013, required quarterly dividend payments to Treasury, equal to each GSE's profit for the immediately preceding company fiscal quarter.

12. The Third Amendment was designed to eliminate further GSEs capital build beyond December 31, 2012, attendant to the companies return to profitability, by net worth profit sweep as SPSPA defined, beginning January 1, 2013, thus compatible with Treasury White Paper of February 2011 announced intent for GSE future liquidation.

13. Absent in Housing and Economic Recovery Act of 2008 ("HERA") statute invocation of the GSE's conservatorship administration, was any clear congressional authorization allowing for (a) FHFA federal agency to cause the Companies to convey any Junior Preferred share economic (i.e., legal payment) entitlements to Treasury, and/or (b) illegally extract in Fifth Amendment taking, without payment of fair consideration, for the approximately $22 billion of Junior Preferred share dividend entitlement, to Senior Preferred in Treasury unjust self-enrichment, January 1, 2013 to date.

14. Third Amendment employment of "Net Worth Amount" language in definitional exclusion of "any obligation in respect of any capital stock of the Company," SPSPA definition acceptable in GAAP Fannie/Freddie conservatorship governance, is otherwise unacceptable under general corporate law, conservatorship governance [5]

[5] For example, the GAAP rule for determining a company's "Net Worth" (i.e., "Capital") is a rule fixed by simple equation of: assets minus liabilities equals Net Worth. While the term "Net Worth" is synonymous with other GAAP

15. The Third Amendment neither eliminated, nor in any way altered the Fannie/Freddie Junior Preferred quarterly dividend contract rights, and obligations of Junior Preferred by reason, inter alia, of the shares underwriting, and marketing, with a federal government Implicit Guaranty of shares legal obligation payment.

16. Nonetheless, Treasury, commencing first quarter 2013 and each quarter thereafter, caused the GSE directors not to consider, and disregard Junior Preferred share contractual timely dividend declaration entitlement rights.

17. These quarterly breaches of Junior Preferred contractual quarterly dividend rights, served to inflate the Companies' quarterly profit amounts, available for Third Amendment sweep, and inflated Senior Preferred dividend payments quarterly engorgement, while depriving the Companies of monies otherwise belonging to Junior Preferred by contract, and payable at conservatorship ending.

18. The Complaint is anchored in Treasury's wrongful actions, each and every quarter beginning January 1, 2013 to date, of Defendant actions preventing the Companies' board of directors from (a) declaring Junior Preferred share dividends, and/or (b) seeking Treasury permission to at least declare but not pay such dividend amounts. Such actions being in continuous quarterly breach, and separately actionable at occurrence by reason of each and every breach being founded at occurrence independent of each other.

19. The Complaint is not an illegal taking claim in challenge to the validity of Third Amendment enactment. The Complaint is instead grounded in ten (10) years of Treasury

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terms such as "Surplus," "Earned Surplus," "Capital Surplus," and "Capital," it is not synonymous with the term "Profit."

The terms "Profit" and "Net Worth" are GAAP singular to themselves. Third Amendment usage of the term "Net Worth" to denote the quarterly transfer of GSE profits to Treasury Senior Preferred thus confusing GAAP (apples), SPSPA (oranges), mixed in Third Amendment usage of the term "Net Worth."

continuous contractual breach, and illegal extraction quarterly taking, following the 2012 promulgation of the Third Amendment, beginning January 1, 2013 and continuing to date.

Implicit Guaranty

20. Defendant, in January 17, 2023 motion to dismiss ("MTD") *Angel v. United States* No. 22-867 complaint ("*Angel II Complaint*"), alleged:

> *"Over the years, both Enterprises issued multiple series of preferred and common stock. The terms of these stock issuances are governed by the relevant certificate of designation (COD).*
>
> *Although the Enterprises are government-sponsored, the statute that has governed regulation of the Enterprises since 1992, and mirrored by HERA in 2008, contains two separate provisions specifying that their securities are not guaranteed by the Federal Government:*
>
> *The Congress finds that... neither the enterprises... nor any securities or obligations issued by the enterprises... are backed by the full faith and credit of the United States.*
>
> *12 U.S.C. §4501(4).*
>
> *This chapter may not be construed as implying that any such enterprise... or any obligations or securities of such an enterprise... are backed by the full faith and credit of the United States.*
>
> *Id. §4503." (MTD pages 4 and 5).*
>
> *"Nothing in the complaint provides any 'clear indication' that the United States intended to contract with Enterprise shareholders. See Mola Dev. Corp., 516 F.3d at 1378. On the contrary, HERA expressly states that neither the Enterprises nor their securities are guaranteed by the United States. 12 U.S.C. §4501(4) ('[N]either the enterprises... nor any securities or obligations issued by the enterprises... are backed by the full faith and credit of the United States;'); 12 U.S.C. §4503 ('This chapter may not be construed as implying that any such enterprise... or any obligations or securities of such an enterprise... are backed by the full faith and credit of the United States.').*

> *Additionally, the absence of a contract between Mr. Angel and the United States defeats his claim for breach of the implied covenant of good faith and fair dealing. Where no contract exists, no implied covenant of good faith and fair dealing exists."[6] (MTD pages 22 and 23).*

21. Alan Greenspan, who served as chairman of the Federal Reserve Board from 1987 through 2006 retirement, presumptively aware of the Federal government statutory disavowal of full faith and credit for GSEs securities in 2007 memoir, "The Age of Turbulence," reflects on financial market perception of Fannie Mae and Freddie Mac securities, as Federal government payment guaranteed at memoir page 242 as follows:

> "They are granted a **de facto subsidy** by financial markets in the form of interest rates with very low credit-risk premiums on their debit – the **markets presume Uncle Sam will bail them out in the event of default**. Fannie and Freddie had been using this subsidy to pad their profits and grow." [Emphasis Supplied]

22. Former Treasury Secretary Henry M. Paulson, Jr. in Fannie, Freddie conservatorship press announcement September 7, 2008 noted government complicit allowance in market perception of an Implicit Guaranty for timely payment of GSE securities to gain market adherence as follows:

> "These Preferred Stock Purchase Agreements 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 posed by the scale and breadth of the holdings of GSE debt and MBS." (Emphasis added)

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[6] See also Angel v. United States, 22-867C, Decision and Order May 12, 2023 at page 15 wherein the Court in affirmation of Defendant allegation stated: Since 1992, however, the United States has explicitly disavowed any Treasury guarantee of the shares or obligations of the Enterprises. See 12 U.S.C. §4501(4) (stating that "neither the [E]nterprises . . . . nor any securities or obligations issued by the [E]nterprises . . . , are backed Angel II by the full faith and credit of the United States"), 4503 ("This chapter may not be construed as obligating the Federal Government, either directly or indirectly, to provide any funds to [Fannie Mae or Freddie Mac], or to honor, reimburse, or otherwise guarantee any obligation or liability of [Fannie Mac or Freddie Mac].")"

23. Regarding government payment guaranty support for Junior Preferred timely legal payment, the Treasury in September 11, 2008 press corrective reverse of September 6 Fannie Mae cancellation of August 2008 $400 million declared Fannie Mae common and preferred dividends, and cancelled dividend reinstatement dispositive of equity security Implicit Guaranty of timely payment same as debt securities:

> "Some may speculate that a future Congress could pass a law that would abrogate the agreement. But any such law would be inconsistent with the U.S. government 's longstanding history of honoring its obligations. Such action would also give rise to government liability to parties suing to enforce their rights under the agreement.
>
> The U.S. Government stands behind the preferred stock purchase agreements and will honor its commitments. Contracts are respected in this country as a fundamental part of rule of law."

and

> "What happens to the declared dividends for investors of existing GSE preferred stock? Dividends actually declared by a GSE before the date of the senior preferred stock purchase agreement will be paid on schedule."

24. In an April 2009 paper entitled "The 2008 Federal Intervention to Stabilize Fannie Mae and Freddie Mac," financial economist W. Scott Frame of the Federal Reserve Bank of Atlanta summarized the government's implicit guaranty of GSE securities as follows:

> *"The features of Fannie Mae's and Freddie Mac's federal charters, coupled with some past government actions, [have] long served to create a perception in financial markets that the federal government 'implicitly guarantees' the GSEs' financial obligations... despite explicit language on ...the GSEs 'securities that they are not obligations of the federal government."*

25. Frame in said working paper further noting that the GSEs issue "**'government securities'** as classified under the Securities Exchange Act of 1934."

26. The question of whether GSE securities qualify as **government securities** is addressed and answered squarely in Comptroller of the Currency Administrator of National Banks

Interpretive Letter #931 (hereinafter IL #931), dated March 15, 2002. Employing 12 U.S.C. 24(7) as its authority, IL #931 states as follows:

> Section 24(Seventh) permits national banks to hold "mortgages, obligations, or other securities which are or even have been sold by [Freddie Mac] pursuant to section 305 or section 306 of the Federal Home Loan Mortgage Corporation Act." Section 306(g) of the Federal Home Loan Mortgage Corporation Act empowers Freddie Mac to issue "preferred stock on such terms and conditions as the Board of Directors shall prescribe." Freddie Mac preferred stock is a "security" that national banks may hold under section 24(Seventh).[7]

27 Board of Governors of the Federal Reserve System Internal Discussion Paper dated March 2012 (Federal Reserve Paper 1045), analyzes the effect on community bank solvency, and lending practices, emanating from the GSE conservatorship September 2008 Dividend Suspension Announcement. Federal Reserve Paper 1045 conclusively establishes the existence of a federal government implicit guaranty of GSE preferred shares as indisputable, and central to the shares de jure marketing as "Government Securities," and federal government guaranty of Junior Preferred legal obligations timely payment (i.e., Implicit Guaranty), no different from that of GSE debt, as acknowledged by Treasury announcement September 11, 2008.[8]

2022 *Angel II* Settlement Agreement

A. Background Principles

28 With no specific rules for the FHFA GSEs conservatorship beyond the Housing and Economic Recovery Act ("HERA") enactment statute, courts need to employ a general body of

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[7] Comptroller of the Currency Administrator of National Banks Interpretive Letter #931, April 2002 http://www.occ.gov/static/interpretations-and-precedents/apr02/int931.pdf

[8] De *jure* marketing fostered by 15 U.S.C. § 78m (requiring every security issuer to file with SEC). If a securities issuer issues only "exempted securities," it need not register with the SEC, as required by 15 U.S.C. § 78c (defining "exempted securities" to include "government securities") and (defining "government securities" to include Fannie and as Freddie securities). The GSEs' securities may also be exempt pursuant to 15 U.S.C § 77c because they are "instrumentalities" of the United States. See also Rice and Rose, Board of Governors of the Federal Reserve System Internal Discussion Paper 1045, *When Good Investments Go Bad*, March 2012 ("*IFDP 1045*").

background legal and accounting principles ("Background Principles"), such as the Constitution, the United States Bankruptcy Code ("Bankruptcy Code"), and general accepted accounting principles ("GAAP") in Federal statute legal governance [9]

29. Principles of the governing conservatorship and Federal insolvency law (i.e., Bankruptcy Code inclusive) requires that a final resolution of the conservatorship leave unaltered the legal, equitable, and contractual rights of the Junior Preferred unless the holders of Junior Preferred agree to any impairment. Cf., 11 U.S.C. §1124. The determination of whether a claim is impaired under federal insolvency law is not subject to a statute of limitations. Cf., 11 U.S.C. §108. The Treasury Defendant refusal to abandon its statute of limitations arguments in *Angel III* MTD precludes monetary payment in amount less than total in monetary breach (i.e., statute of limitation regardless), plus interest and costs of Junior Preferred dividend payment January 1, 2013 to date, to meet the restoration in full requirement of conservatorship and federal insolvency law.

B. GAAP In Background Principles

30 Dividend rights are the defining characteristic of preferred shares. Dividends are payable to shareholders from surplus (i.e., Net Worth), at a defined dividend period. A corporate board of directors determines whether to declare a dividend, and that determination for noncumulative shares must be made within a specific time prior to the time fixed for dividend payment. Once a dividend is declared by the board, GAAP requires the declared dividend amount to be reflected as a liability on company balance sheets, (i.e., preferred dividend payable); and as

[9] See *The Conservatorship of Fannie Mae and Freddie Mac: Actions Violate HERA and Established Insolvency Principle*, a Cato Institute Working Paper authored by Michael Krimminger, who was senior policy adviser with the FDIC at the time of the creation of HERA, and former FHFA director Mark Calabria, who was a member of the senior professional staff to Senator Richard Shelby, Chairman of the United States Senate Committee on Banking, Housing and Urban Affairs at that time. The Cato paper is available at https://investorsunite.org/wp-content/uploads/2015/01/Krimminger-Calabria-HERA-White- Paper-Jan-29.pdf No. 26/CMFA No. 2.

an item on income statement (i.e., preferred dividend expense) in reduction of income, or prior Net Worth in event where there is no profit for the period being swept.

31. Under GAAP declared dividend amounts, are in automatic reduction of quarterly net income, and Junior Preferred dividends once declared, reduce profits available for Treasury Net Worth Sweep conversion. Non-declaration conversely serves to increase the profit amount available for Treasury Net Worth Sweep. By definition, "non-cumulative" preferred share dividends passed without declaration ("Passed Dividends") in a particular year or period are gone forever, and there is no obligation to pay a Passed Dividend when the next dividend declaration period arrives.

A. Example Explanation

1. Assuming (i) GSEs quarterly profit of $2 billion before preferred share dividend declaration, and/or in case of cumulative preferred shares the shares contractual payment date, (ii) Junior preferred share quarterly dividend obligation of $500 million, and (iii) Senior Preferred share net worth sweep entitlement; Junior Preferred share dividend declaration of $500 million without payment would engender combined GAAP accounting reflection as follows:

Day 1 Dividend Declaration
Debit: Company Earned Surplus $2 billion
Credit: Senior Preferred "Capital Reserve" (i.e., Surplus) $1.5 billion Junior Preferred Capital Reserve (i.e., Surplus) $500 Million

2. ***The simple act of GSE non-declaration of Junior Preferred Share quarterly dividends***, having eliminated the Junior Preferred Share dividend charge to quarterly profit, automatically in increased dollar for dollar amount profit availability for Net Worth Sweep Senior Preferred dividend payment with GSE financial statements result as follows:

Day 2 Dividend Payment
Debit: Company earned Surplus $2 billion
Credit: Cash $2 billion
Note: GSE Balance Sheet GAAP reflection being as follows:
1. Company Earned Surplus $0
2. Cash $0
3. Junior Preferred Capital Reserve (i.e., surplus) $0

C. **SPSPA Fifth Amendment**

32. On September 30, 2019, Treasury and FHFA announced their joint agreement to modifications of the SPSPA, so as to allow Fannie Mae and Freddie Mac to maintain Capital Reserves of $25 billion and $20 billion respectively, as recommended in the Treasury 2019 Housing Reform Plan released on September 6, 2019. Fifth Amendment operative language for building GSEs respective Capital Reserve Amounts being:

> "(C) for each Dividend Period from January 1, 2018, through and including June 30, 2019, $3,000,000,000; and (D) for each Dividend Period from July 1, 2019, and thereafter $25,000,000,000 [$20,000,000,000]. *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 %r such Dividend Period."* [Emphasis supplied.]

33. The operative effect of the above-emphasized portion of the Fifth Amendment, is for GSE's Capital Reserve amount to build by simple expedient of declared dividend non-payment, with an attendant balance sheet suspended cash hold in reserve account suspension, assuming, for example, a GSE's quarterly profit Senior Preferred pre-Third Amendment Net Profit Sweep entitlement without Senior Preferred Share payment, and dividend declaration for Junior Preferred Shares, GAAP Fifth Amendment treatment would be:

> Day 1 Dividend Declaration or Cumulative Preferred Maturity: Company Earned Surplus $0 billion
> Credit: Senior Preferred Capital Reserve (i.e , Surplus) $2 billion Note: GSE. Balance Sheet GAAP reflection being as follows:
> 1. Company Earned Surplus $0
> 2. Cash $2 billion
> 3. GSEs Senior Preferred Capital Reserve $2 billion

34. The Fifth Amendment workings was explained by the government in *Fairholme Funds, Inc. et al, v. Federal Housing Finance Agency*, No. 13-1053, as follows:

> Under the amendment Treasury has agreed to forgo further cash dividends until the enterprises build sufficient capital to meet regulatory requirements, a build- up that is expected to take several years. Once the enterprises begin paying dividends to Treasury again, moreover, they will not be required to pay Treasury funds from the capital that they have amassed. The agreement also sets forth the conditions under which Treasury will agree that the enterprises may exit conservatorship and allows the enterprises to raise capital through the issuance of common stock when certain conditions are met.

2022 *ANGEL II* Settlement Agreement (Continued)

35. On October 27, 2020 Plaintiff filed a consensual (i.e., unopposed) motion to suspend briefing in Angel II, pending decision in Collins, stating:

> *"In resolving the statutory and constitutional challenges raised in Collins, the Supreme Court is virtually certain to decide one or more issues that may impact this Court's resolution of Plaintiff's Motion For a Continuance, and/or Defendants MTD. In fact, a key issue to be resolved in Collins is whether the FHFA is constitutionally structured and if not, whether FHFA lacked the authority to enter into the Third Amendment in the first place.*
>
> * * *
>
> However, as pointed out by the Collins amicus court appointee, the government Implicit Guaranty of GSE securities payment, and operating subsidies, are just some of the reasons why the FHFA is structured correctly:
>
> > The GSEs are not ordinary businesses. Fannie and Freddie, for example, enjoy exemptions from regulation and taxation... and special borrowing rights from Treasury... Before the housing crisis, the Congressional Budget Office valued such 'subsidies' at billions of dollars... In fact, because '[m]ost purchasers of the GSEs' debt securities believe that this debt is implicitly backed by the U.S. government,' the subsidy may be worth 'between $122 and $182 billion'... without these 'special privileges,' Fannie and Freddie could well 'be forced out of business.' (Amicus Brief pp. 27-28)
>
> * * *
>
> For the foregoing reasons, Plaintiff respectfully requests that the Court grant this unopposed motion and temporarily suspend briefing relating to Plaintiff's motion for a continuance to permit discovery until after the Supreme Court issues its decision in Collins." [Emphasis Added]"

36. Attendant to its October, 2020 grant of Plaintiff's unopposed motion to suspend briefing, the Court denied prior Defendant MTD, and Plaintiff Motion for Continuance, as moot, and stayed the *Angel II* case without date until further order of the Court, directing the Parties "file a joint status report within thirty days of the *Collins* decision proposing further proceedings in this matter" (hereinafter "October 27, 2020 Briefing Suspension Stay Order").

37. On June 22, 2021, the Supreme Court issued a *Collins* decision, dismissing *Collins* Plaintiff Questions, and resolving both Government Questions in favor of the government, with tangential benefit of neutralizing Treasury's asserted jurisdictional defense of lack of privity between Junior Preferred, and government implicit guaranty of shares timely payment.

38. Waiting for *Collins* afforded the Parties the opportunity to construct a informal settlement protocol, whereby *Plaintiff* counsel, after discussion with Defendant counsel was invited to formulate as Plaintiff Proposals settlement proposals for, (a) Defendant counsel review, and if counsel acceptable, (b) Defendant counsel submission to agency client, for client exclusive, unconditional, absolute option, to either accept or reject (no explanation required, no feedback) (the "Settlement Protocol").

39. The Settlement Protocol resulted in a preliminary draft Settlement Agreement, dated June 10, 2021, delivered to Defendant counsel for client review. On June 17, 2021, Defendant counsel acknowledged Settlement Agreement receipt, stating; "Thank you for your proposal. We will review internally with the agencies, and get back to you. Thanks."

40. In practical terms, the *Angel II* Settlement Agreement effected a status quo ante dividend restoration for Fannie Mae and Freddie Mac junior preferred shares ("Junior Preferred") without immediate cash payment exactly as if the shares were dividend cumulative rather than non-cumulative. Saying the same thing another way, the Settlement Agreement had the same

financial and accounting effects as if Defendant, instead of directing the Companies' boards not to declare Junior Preferred dividend, had simply allowed GSE directors to discharge their duty to consider and declare Junior Preferred share dividends without Defendant contra direction.

41. The *Angel II* Settlement Agreement provided for Treasury to direct GSE respective BOD to affect a simple redivision, and forced sharing of $20 billion of Senior Preferred capital reserve dollars, in retrospective corrective sharing, of Senior Preferred capital reserve amounts to Junior Preferred shares, and shared Capital Reserve amounts eventual conversion into GSE common shares, instead of cash payment

42. In or around January 2022, the parties finalized an agreement to *Angel II* Settlement Agreement . The January 2022 Agreement, which was attached in Joint Status report to the Court, March 24, 2022, would – if not later repudiated by the Defendant – have effected a *status quo ante* dividend restoration for Fannie Mae and Freddie Mac junior preferred shares ("Junior Preferred") without immediate cash payment exactly as if the shares were dividend cumulative rather than non-cumulative.

43. Saying the same thing another way, the Settlement Agreement had the same financial and accounting effects as if Defendant, instead of directing the Companies' boards not to declare Junior Preferred dividend, had simply allowed GSE directors to discharge their duty to consider and declare Junior Preferred share dividends without Defendant contra direction.

44. The *Angel II* Settlement Agreement provided for Treasury to direct GSE respective BOD to affect a simple redivision, and forced sharing of $20 billion of Senior Preferred capital reserve dollars, in retrospective corrective sharing, of Senior Preferred capital reserve amounts to Junior Preferred shares, and shared Capital Reserve amounts eventual conversion into GSE

common shares, instead of cash payment. See Memorandum Appropriate Remedies for Treasury Quarterly Actions Causing a Breach of Contract

45. On March 16, 2022, eight days short of the then-agreed-to filing date for Settlement Agreement in JSR courtesy attachment filing, Defendant advised Plaintiff:

> *"...will not be accepting your settlement offer, nor entering any stipulations at this time. Moreover, we are not interested in further settlement discussion at this time... We anticipate that we will likely seek dismissal of your complaint, along with the complaints in the other cases that are currently stayed, in reliance upon Fairholme and Washington Federal. We will also seek to resume the Court's consideration of the statute of limitations issue in your case."*

II. THE PARTIES

46. Plaintiff Joshua J. Angel is a resident of New York, and owns Junior Preferred Shares of both Fannie Mae and Freddie Mac, purchased after Third Amendment enactment, in amount in excess of $1 million face amount.

47. Plaintiff alleges that all of the Complaint cause of action counts, in damage and/or declaratory entitlement demand run with the shares, irrespective of time of purchase.

48. Defendant United States Department of Treasury ("Treasury" or "U.S. Treasury") is an agency or instrumentality ("Federal Agency") of the United States, having its headquarters at 1500 Pennsylvania Avenue, NW, Washington, DC 20220. It is the post GSE conservatorship purchaser, and owner of 100% of the approximately $189 billion of the Fannie Mae and Freddie Mac Senior Preferred shares issued between September 2008 and December 31, 2012.

III. JURISDICTION AND VENUE

49. The Court has jurisdiction over this action, and venue is proper in this Court pursuant to 28 U.S.C. § 1491(a). Plaintiffs have directed claims under the Tucker Act that are worth more than $22 billion. Plaintiff's claims emanate from Treasury Agency unauthorized taking for itself of approximately $22 billion of Fannie Mae and Freddie Mac funds which by law should

have remained with the companies, and Treasury breach of its contractual guaranty of GSE Junior Preferred share payments, and concurrently rendering $33 billion of Junior Preferred shares (i.e., par value) as permanently impaired and otherwise mandatorily redeemable at action or conservatorship end if not otherwise made whole with regard to estimated then impairment of $20 billion, at either termination of this action, or the conservatorship. See Bankruptcy Code §1124.

IV. FACTUAL ALLEGATIONS

A. The GSEs and Junior Preferred Shares

50. Fannie Mae, and Freddie Mac are federally chartered, privately owned companies that serve public interest purposes, namely: (1) making homes affordable, (2) providing foreclosure relief keeping the secondary mortgage market competitive, stable, and efficient, and (3) increasing secondary mortgage market liquidity. To achieve their goals, the GSEs publicly issue stock and purchase and securitize mortgages as mortgage-backed securities for sale to the public.

51. Among the securities issued by the GSEs pre-conservatorship are the GSEs' Junior Preferred shares.

52. Each series of the GSEs' respective Junior Preferred Shares, is pursuant to a substantially similar COD.

53. All series of Junior Preferred Shares rank in parity with each other, in regard to state law dividend provision. See, e.g., Series Q, 2(a), 2(b), Freddie Mac, Offering Circular, A-2- 4 (Nov. 29, 2007). Within the general class "preferred share securities," Junior Preferred shares enjoy inherent equality of treatment rights in tandem with other preferred share securities. GSEs' directors may not prefer one security in a class over another security in the class by subterfuge, and in effect, taking of monies rightfully belonging to one class member to increase payments to another class member.

54. GSEs, Junior Preferred share capital of approximately $33 billions of par issuance as of September 6, 2008 (i.e., Fannie Mae $19 billion, Freddie Mac $14 billion) together with approximately $189 billion of Treasury purchased Senior Preferred, have remained constant in providing in excess of $222 billions of GAAP balance sheet surplus (i.e., of funds legally available for dividend payment), on the GSEs' financial statements from December 31, 2012 to date. Indeed, it is the existence of that surplus which allows for the Treasury's quarterly sweep of the GSEs' post-January 1, 2013 profits.

55. In July 2008, during the financial crisis of 2007 to 2008, the GSEs' regulator certified both GSEs to be adequately capitalized.

56 On August 8, 2008, the Fannie Mae Board declared a $413 million dividend on the Fannie Mae's Junior Preferred Shares, payable on September 30, 2008 (the "$413 million Pre-Conservatorship Declared/Unpaid Junior Preferred Dividend").

57 On September 6, 2008, FHFA placed the GSEs into conservatorship and appointed itself Conservator of the GSEs. On September 7, 2008, then-FHFA Director Lockhart, in joint statement with then-Treasury Secretary Paulson, announced the SPSPA conservatorship financing's attendant duration suspension of GSE Junior Preferred dividend declaration and payment without prior Treasury written consent.

58. On September 11, 2008, Treasury unequivocally confirmed the federal government's guaranty of payment's enforceability and validity of the Fannie Mae $413 million declared dividend liability, and retracted the dividend's September 7, 2008 cancellation stating, "Contracts are respected in this country as a fundamental part of rule of law.[10]

[10] Prior to Fannie Mae and Freddie Mac entry into conservatorship on September 6, 2008, the federal government guaranteed payment for GSEs securities. On September 7 and 11, 2008, Treasury officials issued a statement wherein, and whereby the Implicit Guaranty of GSEs securities payment was made explicit (the "Guaranty") stating "Contracts

59. Treasury's quarterly breaches of the contractual obligations in the CODs and Implicit Guaranty in outsized ignorance of congressional HERA statutory authorization, are the essence of the issues herein complained of.[11]

60. On January 14, 2021, Treasury and FHFA entered into formal amendment of the SPSPAs inclusive of Fourth and Fifth SPSPA letter agreement provisions prior agreement to amend the SPSPAs as set forth in letter agreements for Fannie, Freddie capital restoration entitled "SPSPAs Fourth Amendment." Stating therein, Treasury has "...begun work to establish a timeline and process to terminate the conservatorship and raise capital."

61. That same day, Treasury issued a public press release in which it set forth conditions for the Companies' release from conservatorship, inter alia, as follows:

> "Treasury establishes no exit from Conservatorship with less than three (3%) percent capital."

* * *

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are respected in this country as a fundamental part of rule of law"). The federal government Implicit Guaranty of GSEs financial obligations was critical to the GSEs' ability to market, and successfully sell, hundreds of billions of dollars of GSEs guaranteed mortgage backed securitized debt ("MBS"), and approximately $22 billions of GSEs Junior Preferred shares, as riskless perpetual capital suitable for financial institution as tier one capital in the pre-conservatorship period of less than one year, beginning late 2007 through May 2008. Fannie Mae's ability, in May 2008, to sell $4.8 billion of 8.75% mandatory convertible Junior Preferred shares, four months prior to the Company's September 6, 2008 entry into conservatorship, was the undoubted result of market acceptance, and reliance on the government Implicit Guaranty of Junior Preferred share payments. See W. Scott Frame, The 2008 Federal Intervention to Stabilize Fannie Mae and Freddie Mac, Federal Reserve Bank of Atlanta (2009); Tara Rice & Jonathan Rose, When Good Investments Go Bad: The Contraction of Community Bank Lending After the 2008 GSE Takeover, Board of Governors of the Fed. Res. Sys., Int'l Fin. Discussion Papers 1045 (2012); and Comptroller of the Currency Administrator of National Banks Interpretive Letter #931, April 2002 http://www.occ.gov/static/interpretations-andprecedents/apr02/int931.pdf. The federal government Implicit Guaranty of GSE securities contractually mandated payments was essentially the same for the companies' debt and Junior Preferred securities.

[11] Irrefutable evidence of the GSEs' option to determine whether or not to declare dividends and pay them with Treasury prior written consent as a power intended for use, and not just fluff, can be found in Fannie Mae's Form 10-K, dated December 31, 2008, regarding the $413 million Pre Conservatorship Declared/Unpaid Junior Preferred Share Dividend as follows:

"[T]he senior preferred stock purchase agreement prohibits us from declaring or paying any dividends on [other] Fannie Mae equity securities . . . without the prior written consent of Treasury. We were permitted to pay previously declared but unpaid dividends on our outstanding preferred stock for the third quarter."

Fannie Mae, Annual Report (Form 10-K), 76 (Dec. 31, 2008) (emphasis added)

> "Allow for Common Stock Issuance at appropriate time: Treasury will allow each GSE to issue common stock upon achievement of future conditions; first, Treasury must have exercised in full its warrant to acquire 79/9% of the GSEs common stock; and second, all material litigation relating to the conservatorship must have been resolved or settled. Treasury will permit up to $70 billion in proceeds in stock issuance by each GSE to be used to build capital."[12]

V. CLASS ACTION ALLEGATIONS

62. Plaintiff brings this class action on behalf of himself and the Class pursuant to Federal Rule of Civil Procedure 23(a) and (b)(2) and/or (b)(3) on behalf of himself and a nationwide class of persons consisting of

> all persons who hold Junior Preferred Shares, of either of Fannie Mae or Freddie Mac issued prior to September 6, 2008.

63. Class members are so numerous that their joinder is impracticable. The exact number of Class members is currently unknown to Plaintiff and is ascertainable through appropriate discovery. Plaintiff believes that Class members will number at least in the thousands. Class members are identifiable from records maintained by Defendants and/or the GSEs' stock transfer agents, and they can be adequately notified of the pendency of this action by mail.

64. Common questions of law and fact exist as to all Class members and predominate over any questions solely affecting individual members of the Class. Those questions include

> a. Whether Treasury breached its contractual guaranty of GSE Junior Preferred share payments, quarter by quarter beginning January 1, 2013 to date and continuing, as it directed;
>
> (i) GSE director Quarterly Dividend Duty non-compliance, and/or
>
> (ii) GSE director failure to seek its written approval for Junior Preferred dividend declaration without immediate payment, and/or
>
> (iii) GSE director Third Amendment Senior Preferred Net Worth Sweep outsized dividend declaration performance

[12] Press release available at home.treasury.gov/news/press-releases/SM129.

b. Whether Treasury breached the implied covenant of good faith and fair dealing inherent in its contractual guaranty of GSE Junior Preferred share payments quarter by quarter beginning January 1, 2013.

c. The extent to which Treasury's actions as set forth above directly damaged Plaintiffs.

65. Plaintiff's claims are typical of the claims of the other Class members, all of whom hold Junior Preferred Shares and were similarly affected by Defendants' alleged misconduct.

66. Plaintiff and his counsel can and will fairly and adequately pursue the interests of the Class members.

67. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. Individual litigation would be highly impracticable for Class members to each seek redress for the harms that the alleged misconduct caused. Class members' individual damages are believed to be relatively small, and the expense and burden of individual litigation is enormous.

68. The prosecution of individual actions by Class members could cause inconsistent or varying adjudications that would: establish incompatible standards of responsibility for Defendants; be dispositive of the interests of other Class members who are not parties to the adjudications; and substantially impair Class members' ability to protect their interests.

VI. CAUSE OF ACTION

COUNT I

QUARTERLY BREACHES OF CONTRACT

69. Plaintiff realleges every allegation in this Complaint as if fully set forth herein.

70. The Junior Preferred CODs are contracts that create contract rights for the Plaintiff and contract obligations for the Defendant.

71. At all times herein relevant Treasury implicitly guaranteed Fannie Mae, and Freddie Mac Junior Preferred dividend rights.

72. The Third Amendment could not and did not eliminate the Junior Preferred's contract rights created by the CODs or the Junior Preferred contract rights created by the Implicit Guaranty.

73. The Third Amendment did not breach Junior Preferred's contract rights. Rather, it was Treasury's quarterly actions preventing the Companies' board of directors from complying with their obligations under the CODs and the Implicit Guaranty that breached Junior Preferred shareholder contract rights.

74. Such quarterly Treasury actions beginning January 1, 2013, caused Fannie Mae Junior Preferred shares to suffer damages for contractual breach of approximately $22 billion to date.[13]

COUNT II

ILLEGAL EXACTION AND EXTRACTION

75. Plaintiff realleges every allegation in this Complaint as if fully set forth herein.

76. HERA created a conservatorship and provided for broad but not unlimited powers for the Conservator.

77. HERA did not (i) eliminate the GSEs, (ii) eliminate private ownership of the GSEs, or (iii) eliminate the contract rights of the private owners.

78. A conservator of an entity owes a fiduciary duty, not only to the creditors of that entity, but also to the owners of that entity.

[13] Pursuant to Delaware and Virginia law, all the rights and liabilities associated with corporate stock, including causes of action, transfer with the shares. See 6 Del. C. § 8-302; Va. Code Ann. § 8.8A-302; and Fairholme Funds, Inc. v. FHFA, No. 13 Civ. 1053 (RCL), 2018 WL 4680197 (D.D.C. Sept. 28, 2018).

79. As set forth below, Treasury engaged in wrongful acts of illegal exaction and extraction in its administrative conduct of the conservatorship:

Illegal Exaction:

(a) Commencing on the quarter beginning January 1, 2013 and separately continuing on or about the first day of each quarter thereafter, Treasury either directed GSE's directors to ignore and disregard, or otherwise did not direct them not to ignore and disregard Junior Preferred contractual dividend rights, as a result of which they ignored such rights. From the quarter commencing on June 1, 2017 to the quarter ending on December 31, 2023, Treasury exacted to itself approximately $13 billion that should have otherwise been reserved for payment to the Class.

Illegal Extraction

(b) Serially beginning on or about January 1, 2013, directing, and otherwise not directing, and thus causing GSE's directors to disregard and ignore Junior Preferred share property rights in certain litigation proceeds and thus engorging the amount of many of the subsequent sweeps of Companies' profits pursuant to the Third Amendment by illegal extractive inclusion of approximately $36 billion of Junior Preferred share litigation proceed property rights.The litigation proceeds in question related to amounts collected by Fannie and Freddie by either judgments against or settlements with mortgage originators for activities in violation of securities laws which resulted in more than $200 billion of defective mortgage products being foisted on the companies. From June 1, 2017

through December 31, 2023, the GSE's recovered approximately $11 billion in such litigation proceeds

80 In effecting these quarterly unauthorized sweeps, Treasury rendered the $33 billion of GSE Junior Preferred shares permanently impaired, making Defendant responsible to effect sums which it illegally extracted within six (6) years of complaint filing payable with interest t in connection with this action.

COUNT III

§1124 DECLARATORY RELIEF

RE: IMPAIRMENT MANDATORY REDEMPTION

81. Plaintiff realleges every allegation in this Complaint as if fully set forth herein.

82. HERA did not eliminate Junior Preferred; HERA did not substantively change the contract rights of the Junior Preferred, including the contract right to a quarterly dividend determination.

83. HERA did give the Director of FHFA the discretionary authority to put Fannie and Freddie into either conservatorship or receivership.

84. The Director chose conservatorship for Fannie and Freddie.

85. The choice of conservatorship instead of receivership is substantively significant. The role of and law relating to conservator is different from the role of and law relating to a receiver. A conservator's duty is to operate, rehabilitate, and restore the financial health of the troubled institution. When that is achieved, the conservatorship is terminated, and the institution is returned to the private sector.

86. More important, at the termination of a conservatorship, the conservator of an entity must respect the contract rights of the shareholders of that entity, cf., O'Melveny & Myers v FDIC,

512 U.S. 79, 86-87 (1994). In the O'Melveny case, the FDIC was purporting to have some powers to do things beyond what the statute said, and what the Supreme Court said was when you become conservator or receiver, you step into the shoes of the entity, in this case, Fannie and Freddie. -- you have all the obligations that they had except to the extent that the resolution statute expressly overrides those.

87. Again, HERA, the resolution statute, did not eliminate or substantively change the dividend rights of the Junior Preferred and so the conservatorship cannot effect a substantive change in the dividend rights of the Junior Preferred.

88. Accordingly, the legal concepts of conservatorship law as well as federal insolvency law, including Title 11, require that termination of the conservatorship must include Fannie Mae and Fredie Mac's belated effectuation of the Junior Preferred's dividend rights so that the conservatorship does not result in a nonconsensual impairment of the Junior Preferred's contract rights and there are no statute of limitations constraints in determining whether the conservatorship's meets that requirement. Cf 11 USC 1124, 109

89. Moreover, under the legal concepts of conservatorship law and federal insolvency law, satisfaction of Treasury's own conditions for the GSEs' exit from the conservatorship as set out in the Treasury press release of January 14, 2021 will require full reinstatement of the Junior Preferred, and make whole payment of not less than $20 billion inclusive of cure and interest payment.

COUNT IV

***ANGEL II* SETTLEMENT AGREEMENT**

BREACH OF CONTRACT DAMAGES

90. Plaintiff realleges every allegation in this Complaint as if fully set forth herein.

91. General contract law principles govern contract litigation in which the federal government is a party.

92. Under general contract law principles Plaintiff's settlement proposal delivered to the Defendant on June 10, 2021 constituted an offer.

93. Under general contract law principles, the words and conduct of Defendant's agents from June 2021 to January 2022 constituted an acceptance, i.e., "manifestation of assent to the terms thereof," resulting in the formation of a contract as provided in Restatement (Second) of Contracts section 171(1).

94. Under general contract law principles, a party to a contract cannot "un-accept" an already accepted offer.

95. Accordingly, Defendant's email of March 16, 2022, was not a refusal to accept an offer that had already been accepted, but rather a breach of an existing contract which gives rise to Plaintiff's right to damages for breach of contract.

COUNT V

DECLARATORY RELIEF RE:

FEDERAL GOVERNMENT GUARANTY OF TIMELY

PAYMENT FOR JUNIOR PREFERRED SHARE LEGAL OBLIGATIONS

96. Plaintiff realleges every allegation in this Complaint as if fully set forth herein.

97. General contract law principles govern contract litigation in which the federal government is a party.

98. Accordingly, the Government, like private parties, can enter in unilateral contracts as well as bilateral contracts.

99. Prior to Plaintiff's purchase of Junior Preferred stock, the words and conduct of Government officials manifested a government commitment to guarantee the dividend rights of Junior Preferred to induce financial institutions and others to buy Junior Preferred.

100. Plaintiff purchased Junior Preferred stock in reliance on this implicit guarantee.

101. Under general contract law principles, the Government's words and conduct created an offer to enter into a unilateral contract and the bargained for conduct by the Plaintiff in buying the Junior Preferred stock was an acceptance of that offer creating a binding unilateral contract.

102. Commencing with the filing of this complaint, Treasury has sixty (60) days in which to settle, answer, or move in regard thereto.

103. Based upon Treasury's responses to prior complaints, declaratory relief with regard to this Count is timely.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that this Court:

A. Determining that this action is a proper class action under Rule 23 of the Federal Rules of Civil Procedure, appointing Plaintiff as Class representative and Plaintiff's counsel as Class counsel;

B. Award $22 billion in compensatory damages under Counts I , II, and IV to the Class against Defendant;

C. Award declaratory relief, and compensatory attorneys' fees for benefits conferred under Counts III and V to the Class against Defendant;

D. Award prejudgment and post-judgment interest on those compensatory damages,

E. Award Plaintiff reasonable attorneys' fees for benefits conferred and awarded compensatory damages, based on a percentage of not less than 2% of costs; and

F. Order such other relief as this Court deems just and equitable.

Dated: June 1, 2023
New York, New York

JOSHUA J. ANGEL PLLC

By: Joshua J. Angel

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New York, New York 10075
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Email: joshuaangelnyc@gmail.com

Counsel:
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Attorneys for Plaintiff

EXHIBIT B

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January 25, 2024

Via Email and Overnight Delivery

Anthony F. Schiavetti, Esq.
Senior Trial Counsel
Commercial Litigation Branch
Civil Division
U.S. Department of Justice
P.O. Box 480
Ben Franklin Station
Washington, DC 20044
Anthony.f.schiavetti@usdoj.gov

Re: *Joshua J. Angel v. United States,*
1:23 CV 800 (*U.S. Court of Federal Claims)*

Dear Tony,

Per Judge Sweeney's decision dated January 23, 2024 (Doc. 22) – incidentally, my 88th birthday – I have determined per you failure to respond to my last two letters, that it would be best and most efficient for me to request your consent to my amending the Angel IV Complaint by delete fn. 6 to paragraph 19 and clarifying paragraph 79, rather than cross-moving in response to the pending motion to dismiss. A copy of the Angel IV with the proposed amendments redlined is enclosed.

Please let me know if you consent to the proposed amendments. We can submit a stipulation and Amended Complaint to the Court in short order.

Thank you,

Josh

January 25, 2024

EXHIBIT C

From: "Schiavetti, Anthony F. (CIV)" <Anthony.F.Schiavetti@usdoj.gov>
Date: January 29, 2024 at 10:48:31 AM AST
To: Joshua Angel <joshuaangelnyc@gmail.com>
Subject: RE: [EXTERNAL] Angel IV Complaint Amendment

Mr. Angel,

Good morning. The United States opposes as futile your motion for leave to amend the complaint.

Tony

Anthony F. Schiavetti
Senior Trial Counsel
U.S. Department of Justice
Civil Division - Commercial Litigation Branch
P.O. Box 480
Ben Franklin Station
Washington, D.C. 20044
Tel: (202) 305-7572
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anthony.f.schiavetti@usdoj.gov

For overnight mail, please use:
1100 L Street, N.W., Room 10012
Washington, D.C., 20005

From: Joshua Angel <joshuaangelnyc@gmail.com>
Sent: Monday, January 29, 2024 8:53 AM
To: Schiavetti, Anthony F. (CIV) <Anthony.F.Schiavetti@usdoj.gov>; Joshua J. Angel <joshuaangelnyc@gmail.com>
Subject: [EXTERNAL] Angel IV Complaint Amendment

Tony ; Having no response in respect to mine of the 25th. regarding Angel IV Complaint amendment , I have determined best to deal with issue via simple motion to amend complaint. Please advise by close of business today ,Defendant consent ,or opposition to Angel IV Complaint amendment as set forth in mine of the 25th.,and continuation for Plaintiff response to Defendant MTD Angel IV Complaint until 30 days after Court amendment motion decision . Thanks Josh

Joshua Angel
joshuaangelnyc@gmail.com
917-710-2107

EXHIBIT D

Joshua J, Angel, Esq.
9 East 79th Street
New York, NY 10075
(917) 714-0409

September 5, 2023

Via Email and First Class Mail

John Marzulli
Danielle Bluestein Hass
United States Attorney's Office
Eastern District of New York
271 Cadman Plaza East
Brooklyn, NY 11201
Justice.gov@usao-edny
(718) 254-7508 (fax)

Re: Press Release August 14, 2023 "UBS Agrees to Pay $1.435 Billion to resolve Claims that it made Misrepresentations in the Sale of Residential Mortgage-Backed Securities

-and-

Angel v. United States, CFC No. 23-CV 0800

Dear Mr. Marzulli and Ms. Hass,

Please be advised that I serve as both lead counsel and Plaintiff in *Angel v. United States* ("Angel IV") presently pending in the United States Court of Federal Claims. Several days ago, I came across the above referenced press release and realized that a certain aspect of the litigations described in the following paragraph could be relevant to jurisdictional discovery that we anticipate taking shortly in Angel IV.

> With the UBS settlement announced today, the Department of Justice has collected more than $36 billion in civil penalties from 18 major domestic and foreign banks, originators, and rating agencies for their alleged conduct in connection with mortgages securitized in failed RMBS leading up to the 2008 financial crises. These resolutions include settlements with eighteen banks, mortgage originators and rating agencies: Ally Financial; Aurora Loan Services; Bank of America; Barclays; Citigroup; Credit Suisse; Deutche Bank; General

Electric; Goldman Sachs; HSBC; JP Morgan; Moody's; Morgan Stanley; Nomura; Royal Bank of Scotland; S&P; Societe General and Wells Fargo.

Rather than engage in the burden of potential non-party discovery, I was wondering if your office would be willing to voluntarily disclose the respective dates and amounts that any portion of the $36 billion in civil penalties was remitted by your office to either Fannie Mae or Freddie Mac between January 1, 2016 to date. If there is any portion, yet to be remitted, would you voluntarily disclose the amount and anticipated date of remittance?

The lead counsel representing the Defendant in Angel IV is Anthony F. Schiavetti, who has been copied on this letter. His contact information is:

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Yours truly,

Joshua J. Angel

cc. Lewis Kruger. Esq. llkruger@aol.com
Prof. David P. Epstein depstein@richmond.edu
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EXHIBIT E

Joshua J, Angel, Esq.
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September 5, 2023

Via Email and First Class Mail

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Dear Tony,

Attendant to my Monday, August 28, 2023 discovery of a press release issued 14 days earlier by the United States Attorney's office for the Eastern District of New York announcing an agreed civil penalty of $1,435 billion against UBS, bringing the total amount recovered by the RMBS Working Group to some $36 billion, I penned and sent the attached letter to the individuals named in the press release. The operative portion of the letter was my request "to voluntarily the respective dates and amounts that any portion of the $36 billion in civil penalties was remitted by the EDNY to either Fannie Mae or Freddie Mac between January 1, 2016 to date. If there is any portion, yet to be remitted, would you voluntarily disclose the amount and anticipated date of remittance?

The absence of the foregoing information caused Plaintiff to erroneously view the amounts theretofore recovered as *sui generis* and not complained of herewith" even though a portion of the litigation proceeds had been swept to Treasury as part of the New Worth Sweep regime. *Angel IV Complaint, page 8, fn. 6.* Given the breadth of the RMBS Working Group, your office is probably chargeable with knowledge of the information we are seeking. I therefore trust that your office will interpose no objection to the voluntary disclosure I have sought from the EDNY.

I leave for a final summer week in Europe tomorrow, returning September 17, 2023, should you want to revisit Defendant's prior positions regarding either settlement or jurisdictional discovery.

Thanks,

Josh

cc. Lewis Kruger, Esq. llkruger@aol.com
Prof. David P. Epstein depstein@richmond.edu