IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MICHAEL ROP, *et al.*, Plaintiffs, v. THE FEDERAL HOUSING FINANCE AGENCY, *et al.*, Defendants.	Case No. 1:17-cv-00497

FHFA'S REPLY BRIEF IN SUPPORT OF
ITS MOTION FOR JUDGMENT ON THE PLEADINGS

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

Cases

Other Authorities

Plaintiffs' opposition to the Federal Housing Finance Agency Defendants' ("FHFA") motion for judgment on the pleadings fails to meaningfully respond to FHFA's arguments. Instead, much of Plaintiffs' opposition effectively constitutes an improper reply in support of Plaintiffs' pending motion to amend. The Court should reject Plaintiffs' arguments and enter judgment on the pleadings to bring this long-running litigation to a close, consistent with the outcome in all of the other related shareholder cases.

Indeed, just last week, a shareholder plaintiff—represented by the same counsel as here—*conceded* that outcome in *Wazee Street Opportunities Fund IV, LP v. FHFA*, No. 18-cv-3478 (E.D. Pa.). The operative complaint in *Wazee* is substantially similar to the First Amended Complaint in this case. After denying the shareholder-plaintiff leave to file an amended complaint, the *Wazee* court ordered the plaintiff to show cause why the case should not be dismissed. The *Wazee* plaintiff responded that "Plaintiff agrees that this matter should be dismissed" subject to appeal of the denial of leave to amend, and the court obliged. *See* Ex. A (*Wazee* plaintiff's response to rule to show cause), Ex. B (dismissal order). The Court should follow the Pennsylvania court's lead and dismiss this case with prejudice.

I. Plaintiffs Do Not Dispute, and Therefore Concede, that the First Amended Complaint Alleges No Facts Causally Linking the Removal Restriction to Dividend Payments

The Sixth Circuit's narrow remand of this case was "for further consideration of whether the [removal] restriction actually affected any actions implementing the third amendment that allegedly harmed shareholders." *Rop v. FHFA*, 50 F.4th 563, 576 (6th Cir. 2022). The Sixth Circuit discerned the possibility of such a claim in the

First Amended Complaint's request for return of "'all dividend payments made pursuant to the [third amendment's net worth sweep],'" amounting to "$215.6 billion in net worth sweep dividends from January 2013 to June 2017[.]" *Id* at 576 & n.7 (quoting First Amended Complaint, ECF No. 17 PageID.271). However, it is up to this Court to determine if such a claim exists, which is precisely the purpose of this motion.

FHFA's opening brief established that the First Amended Complaint is devoid of any facts suggesting that any of the $215.6 billion in 2013-2017 dividends were actually affected by the removal restriction. Mot. at 7-9. The bulk of those dividends were paid in 2013 when FHFA had an Acting Director not covered by the removal provision, making any causality impossible. As to the dividends paid between 2014 and 2017, there is no allegation that either President in office during those years disagreed with the calculation or payment of those dividends, much less that he lacked control over those dividends through his plenary power over Treasury, the payee of the dividends.

Plaintiffs' 24-page opposition brief offers no response on that essential point. Plaintiffs only allude to general allegations that "FHFA has ordered the Companies to pay quarterly dividends" and those dividends are "especially harmful." Opp. at 7 (citing ECF No. 17 ¶ 128, PageID.253-54). The mere fact of payment and the label of "harmful" do not equate to the dividends being "specifically impacted" by the removal

provision, as the law requires. *Calcutt v. FDIC*, 37 F.4th 293, 315 (6th Cir. 2022), *rev'd on other grounds*, 598 U.S. 623 (2023).[1]

When a party fails to respond to a motion or argument therein, the Sixth Circuit has held that the lack of response is grounds for the district court to assume opposition to the motion is waived. *McKerracher v. Green Tree Serv.*, 2015 WL 9942621, at *5 (W.D. Mich. Dec. 17. 2015) (citing *Humphrey v. U.S. Atty. General's Office*, 279 F. App'x 328, 331 (6th Cir. 2008)). Plaintiffs' concession through silence rings just as loud and clear as their recent express concession in *Wazee*: The First Amended Complaint does not causally link any dividend payments to the removal provision, and that fact alone is sufficient grounds, in and of itself, to grant judgment on the pleadings—even without reaching any further issues.

II. The Sixth Circuit's Decision Remanding This Case Does Not Foreclose Dismissal on the Pleadings

Plaintiffs take the position that the Sixth Circuit's 2022 decision remanding this case "largely forecloses" judgment on the pleadings. Opp. at 5-8. That is wrong.

First, the fact that the Sixth Circuit characterized certain of Plaintiffs' arguments as "properly preserved" does not foreclose dismissal on the pleadings. Opp. at 5 (quoting *Rop*, 50 F.4th at 575 n.6). "Properly preserved" just means the argument had not been waived. Whether a preserved argument establishes a plausible entitlement to relief under *Twombly* and *Iqbal* is another matter entirely.

[1] The Supreme Court's reversal in *Calcutt* related solely to issues having nothing to do with removal restriction claim, namely that the Sixth Circuit had upheld the challenged FDIC action based on a new substantive rationale not relied on by the FDIC itself, in conflict with the *Chenery* doctrine of administrative law. *See Calcutt v. FDIC*, 598 U.S. 623, 624 (2023).

Nor does the Sixth Circuit's quotation from the First Amended Complaint's prayer for relief—seeking return of Third Amendment dividend payments or recharacterization of such payments as a paydown of the liquidation preference—somehow preclude dismissal. Opp. at 5 (quoting *Rop*, 50 F.4th at 576). The Sixth Circuit was merely describing what Plaintiffs sought as relief, not endorsing that request as being sufficiently supported by plausible allegations of fact to withstand dismissal.

The Sixth Circuit's characterization of such relief as "retrospective" and "tethered to shareholders' argument that the Recovery Act's removal restriction is unconstitutional," Opp. at 5 (quoting *Rop*, 50 F.4th at 576), does not confer immunity from dismissal either. To be sure, the only relief *Collins* leaves open for shareholders to pursue is "retrospective" relief with a nexus to the removal restriction. But that does not make the word "retrospective" a talisman that relieves Plaintiffs from their obligation to allege "direct or inferential allegations respecting all the material elements under some viable legal theory." *Barany-Snyder v. Weiner*, 539 F.3d 327, 332 (6th Cir. 2008) (quoting *Commercial Money Ctr., Inc. v. Illinois Union Ins. Co.*, 508 F.3d 327, 336 (6th Cir. 2007)). Here, that obligation requires facts plausibly demonstrating "that the removal restriction specifically impacted" the complained-of dividends. *Calcutt*, 37 F.4th at 315. Like the Supreme Court in *Collins*, the Sixth Circuit left it up to this Court to determine whether the plaintiffs were entitled to any remedy at all. *See Collins v. Yellen,* 594 U.S. 220, 228 (2021) (remanding "for further proceedings to determine what remedy, *if any*, the shareholders are entitled

to receive on their constitutional claim") (emphasis added). Clearly, Plaintiffs have not pled sufficient facts to meet the requirements for relief based on the remand outlined by *Collins* and the Sixth Circuit.

III. Plaintiffs Cannot Overcome Section 4617(f)'s Bar Through "Law of the Case" or Any Other Argument

Equally baseless are Plaintiffs' arguments that the Supreme Court, Sixth Circuit, and this Court have rejected Defendants' argument that § 4617(f) bars relief. Plaintiffs have the import of *Collins* backwards: The Supreme Court held that through § 4617(f), Congress "sharply circumscribed judicial review of any action that the FHFA takes as a conservator or receiver," *Collins*, 594 U.S. at 237, and further held that any business decision within the Conservator's authority is "protected from judicial review" review under § 4617(f), *id.* at 254. *Collins* also held that all relevant actions by FHFA relating to "implementing the third amendment," including payment of dividends to Treasury, were within FHFA's constitutional and statutory authority as Conservator. *Id.* at 258 & n.23.

Plaintiffs ask the Court to draw an inference from silence, surmising that § 4617(f) cannot apply to their claims because the Supreme Court "made no mention" of § 4617(f) in the part of *Collins* addressing the shareholders' constitutional claims. Opp. at 9. But there was no reason for the Court to address § 4617(f)'s application in that context because it was never in doubt that § 4617(f) did not prevent the Court from deciding whether the removal provision was constitutional, and the further relief the shareholders were then pursuing—invalidation of the Third Amendment—

was unavailable anyway because the Third Amendment was adopted by an Acting Director. *See Collins*, 594 U.S. at 257.

The Supreme Court does not make binding holdings through silence. *See United States v. L.A. Tucker Truck Lines, Inc.,* 344 U.S. 33, 38 (1952) (issue not "raised in briefs or argument nor discussed in the opinion of the Court" cannot be taken as "a binding precedent on th[e] point"); *Webster v. Fall,* 266 U.S. 507, 511 (1925) ("Questions which merely lurk in the record, neither brought to the attention of the court nor ruled upon, are not to be considered as having been so decided as to constitute precedents."). Rather, the Court left it open for the lower courts to review requests by shareholders for particular forms of relief relating to Third Amendment implementation and how § 4617(f) would apply within the constructs set by the Court. *See Collins*, 594 U.S. at 260 ("The parties' arguments should be resolved in the first instance by the lower courts."); *id.* at 269 & n.7 (Thomas, J., concurring) (foreshadowing that § 4617(f) would be a key issue for any further claims).

Plaintiffs' argument that the Sixth Circuit "implicitly rejected" application of § 4617(f), Opp. at 9-10, is even weaker. Plaintiffs concede that the Sixth Circuit "did not even mention" § 4617(f). *Id.* at 9. The Sixth Circuit does not make holdings through silence any more than the Supreme Court does. *See Nemir v. Mitsubishi Motors Corp.*, 381 F.3d 540, 559 (6th Cir. 2004) (citing *Webster*, 266 U.S. at 511).

Plaintiffs also erroneously assert that "this Court has already held that § 4617(f) does not bar Plaintiffs' constitutional claim." Opp. at 10. On the contrary, this Court's 2020 decision, which predated *Collins*, only mentioned § 4617(f) once, in

the statutory background section of the opinion. ECF No. 66 PageID.1760. The 2020 decision never considered whether § 4617(f) barred any claims brought by Plaintiffs, because, as with the Supreme Court phase of *Collins*, Defendants did not argue that the statute prevented consideration of whether the removal provision was constitutional.

The 2020 opinion's statement that "HERA does not prevent [Plaintiffs] from pursuing *constitutional* claims," ECF No. 66 PageID.1789, related to a different part of HERA—a clause providing that FHFA as Conservator succeeds to rights of shareholders—rather than to § 4617(f). *See id.* (heading: "The succession clause does not bar constitutional claims"). The argument this Court rejected was that shareholders lost any rights to obtain judicial review of the constitutionality of the removal provision "because HERA transferred that right to the FHFA." *Id.* at PageID.1788. That question is entirely distinct from § 4617(f), which "does not bar judicial review of constitutional claims" but rather "simply bars certain types of relief" that interfere with authorized Conservator powers and functions. *Bhatti v. FHFA,* 646 F. Supp. 3d 1003, 1017 (D. Minn. 2022).

With Plaintiffs' "law of the case" arguments out of the way, their objections to § 4617(f) founder. Plaintiffs rely on *Webster v. Doe*, 486 U.S. 592 (1988), and similar cases holding that congressional intent must be clear to "deny any judicial forum for a colorable constitutional claim," *id.* at 603. But § 4617(f) does not bar any judicial forum for a colorable constitutional claim, and the Supreme Court, examining the congressional intent behind this precise statute, concluded that its purpose and effect

are to ensure that the Conservator's "business decisions are protected from judicial review." *Collins*, 594 U.S. at 254; *see also Bhatti*, 646 F. Supp. 3d at 1017 (distinguishing *Webster*); *Krafsur v. Davenport*, 736 F.3d 1032, 1037 (6th Cir. 2013) (observing that *Webster* and similar cases "involved a total denial of judicial review for constitutional claims"). As a practical matter, Plaintiffs' concerns about "denying any judicial forum" ring hollow when they and their fellow shareholders have occupied numerous courts across the country with these issues for nearly a decade, including procuring a ruling on the merits of their constitutional issue from the Supreme Court.

Plaintiffs also urge the Court to follow out-of-circuit dicta in *FDIC v. Bank of Coushatta*, 930 F.2d 1122, 1130 (5th Cir. 1991), as "persuasive authority." Opp. at 11-12 n.2. In *Bank of Coushatta*, however, the court did not issue any injunction interfering with conservator powers and functions in the face of a provision like § 4617(f). It merely addressed "whether there is a constitutional right to a full hearing on the record prior to issuance of a [capital] directive," ruling that no such right existed. 930 F.2d at 1130 (quotation marks omitted). In a case from the same era that included constitutional claims, the Sixth Circuit, despite being well-acquainted with *Bank of Coushatta* (which it relied on for the proposition that certain FDIC and OTS decisions are "not subject to judicial review"), held that a provision identical to § 4617(f) "deprived the district court of jurisdiction to enter the injunction that [plaintiff] sought." *United Liberty Life Ins. Co. v. Ryan*, 985 F.2d 1320, 1327, 1329 (6th Cir. 1993) (quoting *Telematics Int'l, Inc. v. NEMLC Leasing Corp.*, 967 F.2d

703, 705 (1st Cir.1992)). In sum, all of Plaintiffs' arguments against application of § 4617(f) here are without merit, and the Court should apply the statute to hold that the relief sought by Plaintiffs in their First Amended Complaint is barred.

IV. This Court's 2020 Decision Does Not Require Ignoring the President's Plenary Control Over Treasury

Plaintiffs' position (Opp. at 12-13) that the law-of-the-case doctrine requires the Court to ignore the President's undisputed plenary control over Treasury is also wrong. Plaintiffs rely on a passage in the Court's 2020 opinion holding that Plaintiffs met the "fairly traceable" prong for Article III standing despite Treasury's involvement in the adoption of the Third Amendment. *See* ECF No. 66 PageID.1770. But that passage is inapplicable and is not binding "law of the case" regarding the requirements the Supreme Court articulated in *Collins* for any retrospective relief to shareholders.

At the Article III standing stage, a plaintiff's burden to show that its alleged injuries are "fairly traceable" to the defendant's conduct is "relatively modest." *Id.* at PageID.1772 (quoting *Bennett v. Spear*, 520 U.S. 154, 171 (1997)). But, "[o]f course, causation to support standing is not synonymous with causation sufficient to support a claim." *Parsons v. U.S. Dep't of Justice*, 801 F.3d 701, 715 (6th Cir. 2015). Rather, the "test for standing" is a lower bar than "whether the [plaintiffs] met [*Iqbal*] and [*Twombly*] pleading requirements." *Id.*

Indeed, the standard *Collins* articulated for retrospective claims is the direct opposite of the standard this Court applied in finding Article III standing. While Article III standing did not require Plaintiffs "to show that the outcome would have

been different without the separation-of-powers problem alleged in the complaint," ECF No. 66 PageID.1771, that is precisely what is required of shareholders pursuing retrospective claims for harm under the Supreme Court's decision in *Collins*. As the Sixth Circuit has emphasized, a "possibility that an agency with different personnel might have acted differently" is insufficient; the Supreme Court required a "more concrete showing," namely "the constitutional violation must have *caused* the harm." *Calcutt*, 37 F.4th at 316-17; *accord Collins v. Dep't of the Treasury*, 83 F.4th 970, 982 (5th Cir. 2023) ("[A]fter *Collins*, a party challenging agency action must show not only that the removal restriction transgresses the Constitution's separation of powers but also that the unconstitutional provision caused (or would cause) them harm.") (quoting *Cmty. Fin. Servs. Ass'n of Am., Ltd. v. CFPB*, 51 F.4th 616, 632 (5th Cir. 2022), *rev'd on other grounds*, 610 U.S. 416 (2024)).

In addition, the discussion in the 2020 opinion related solely to whether the President's control of Treasury made it impossible for the removal restriction to affect the *adoption* of the Third Amendment, a two-party contract that "required the approval of the FHFA as well as Treasury." ECF No. 66 PageID.1771. Now, however, the issue is whether the removal restriction could have impeded the President from having Treasury renounce some or all of the dividends that were paid to Treasury in 2013-2017. The First Amended Complaint articulates no facts plausibly explaining how an unconstitutional removal restriction applicable to *FHFA* could have stood in the way of *Treasury* giving up some of its consideration.

V. Plaintiffs' Further Arguments In Support of Their Motion to Amend Are Procedurally Improper and Without Merit

The second half of Plaintiffs' opposition brief is functionally a reply brief in support of their pending motion for leave to file a second amended complaint (ECF No. 107). This Court's Local Rules, however, do not allow reply briefs as of right for non-dispositive motions, and Plaintiffs have not moved for leave to file a reply brief. L. Civ. R. 7.3(c). In any event, if the Court considers Plaintiffs' reply arguments, it should reject them because they are wholly without merit.

Plaintiffs do not dispute that four courts—two district courts, two appellate—have dismissed under Rule 12(b)(6) the exact claims and theories that they seek to add here via amendment,[2] a fifth court has denied a Rule 15 motion to amend on the ground that those claims are futile,[3] and a sixth has ruled that shareholders could never make out any kind of viable claim for retrospective relief relating to the Third Amendment under *Collins*, as most of the Justices had foreshadowed.[4] Nor do

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[2] *Bhatti v. FHFA*, 646 F. Supp. 3d 1003 (D. Minn. 2022), *aff'd*, 97 F.4th 556 (8th Cir. 2024); *Collins v. Lew*, 642 F. Supp. 3d 577 (S.D. Tex. 2022), *aff'd*, 83 F.4th 970 (5th Cir. 2023).

[3] *Wazee Street Opportunities Fund IV, LP v. FHFA*, 2025 WL 1106068, *5-*6 (E.D. Pa. Apr. 14, 2025). Plaintiffs try to distinguish *Wazee* on the ground that their counterpart shareholders in that case delayed seeking amendment for a prolonged period. Opp. at 15 n.4. But the court in *Wazee* denied amendment both for delay *and* on the separate and independent ground of futility. Moreover, Plaintiffs here unduly delayed seeking to amend for nearly four months after their previous motion was denied, and have offered no excuse for that delay.

[4] *Fairholme Funds, Inc. v. United States*, 26 F.4th 1274, 1304-05 (Fed. Cir. 2022). While Plaintiffs criticize *Fairholme Funds* as decided without briefing of the relevant issues by the parties, the fact that the appellate panel unanimously found the issues so straightforward and adequately illuminated by existing case law cuts against, not in favor of, Plaintiffs' request for yet another round of briefing in this case.

Plaintiffs dispute that the allegations in their proposed second amended complaint are virtually word-for-word identical to those in five of those six cases. Plaintiffs simply believe they are right and all of those courts were wrong and insist on an opportunity to fully relitigate those issues in this Court through yet another full round of Rule 12(b) briefing. The Federal Rules call for the "just, speedy, and inexpensive determination of every action and proceeding." Fed. R. Civ. P. 1. Plaintiffs' apparent goal, on the other hand, is to string this litigation on for as long as possible in a misguided effort to persuade this Court that *every other court* that has considered Plaintiffs' claims got the outcome wrong.

Throughout the eleven pages of their opposition brief arguing for amendment, Opp. at 13-24, Plaintiffs make no serious effort to rebut the reasoning of the six courts that have rejected their position. Indeed, other than noting that *Collins* and *Bhatti* were decided on Rule 12(b)(6) motions after amended complaints had been filed, Opp. at 15, they do not even refer to those decisions or any particular passages in them. They level a vague critique that the other decisions "failed to adhere to the proper standard under Rule 12(b)(6)," namely, "accepting all factual allegations as true," *id.*, but that is demonstrably false. *See*, *e.g.*, *Bhatti*, 646 F. Supp. 3d at 1009 ("a court must accept as true all of the factual allegations in the complaint and draw all reasonable inferences in the plaintiff's favor"); *Bhatti*, 97 F.4th at 561 (finding plaintiffs' allegations "failed to plausibly state a claim for relief," which requires factual allegations sufficient "to raise a right to relief above the speculative level") (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)); *Collins*, 83 F.4th at

978 (under Rule 12(b)(6), "we generally take as true what a complaint alleges"); *Wazee Street Opportunities Fund IV, LP v. FHFA*, 2025 WL 1106068, at *1 n.2 (E.D. Pa. Apr. 14, 2025) ("accept[ing] as true all factual allegations in the proposed amended complaint and construe[ing] the facts therein in the light most favorable to plaintiff").

The remainder of Plaintiffs' opposition brief simply quotes the same key passage on retrospective relief in *Collins* that the other courts have construed and applied and then embarks on a lengthy narration of the allegations in their proposed second amended complaint. *See* Opp. at 16-24 (quoting ECF No. 106-1 ¶¶ 50, 51, 52-56, 53, 54, 55, 56, 57, 59, 62, 62-69, 70, 74, 75, 76-81, 82, 83, 84, 85, 86, 90). Plaintiffs do not confront the overwhelming reasons all of the other courts already articulated for finding those same allegations insufficient.

For example, Plaintiffs' opposition brief includes a long set of bullets reprising allegations that the Administration had a goal of ending the conservatorships of Fannie Mae and Freddie Mac. Opp. at 18-19. But as the appellate court in *Bhatti* explained, the "general goal of removing the companies from conservatorship" cannot be equated with "the specific step of eliminating the liquidation preference." *Bhatti*, 97 F.4th at 561; *accord Collins*, 642 F. Supp. 3d at 584 (emphasizing that the goal of ending the conservatorships does not mean "that plan necessarily involved liquidating Treasury's preferred stocks").

Plaintiffs similarly highlight an allegation in paragraph 59 of the proposed second amended complaint about a September 2019 Treasury report mentioning the possible elimination of the liquidation preferences. Opp. at 20. But that same

Treasury report figured prominently in the other complaints and was thoroughly considered by the other courts, which found it did not remotely support Plaintiffs' allegations. As the Eighth Circuit observed, the "2019 Treasury report said that reducing the Treasury's interest was one '[p]otential approach,' but also listed other ideas, such as placing the companies into receivership." *Bhatti*, 97 F.4th at 560; *see also Bhatti*, 646 F. Supp. 3d at 1013 (refuting identical allegation in *Bhatti* complaint as "point[ing] to only one fragment of one document that even suggested [eliminating the liquidation preferences] as an *option*, SAC ¶ 59"); *Collins*, 642 F. Supp. 3d at 585 (September 2019 Treasury report presented "a list of other policy options"). Plaintiffs offer no response.

Equally surprising is Plaintiffs' showcasing of allegations based on a podcast interview of a former Treasury official. Opp. at 21 (citing ECF No. 106-1 ¶ 69). The Eighth Circuit dismantled Plaintiffs' reliance on that source as well, explaining that "the interview actually *undermines* plaintiffs' allegations, as [the official] goes on to note other reasons for the lack of reforms (including deficit concerns and greater tax and bank reform priorities)." *Bhatti*, 97 F.4th at 561 (quotation marks omitted). As the court emphasized, the official "also says that [former FHFA Director] Watt 'felt very strongly' about ending the conservatorships, had similar views to Trump-appointee Director Mark A. Calabria, and 'would have actually done almost anything we wanted him to do.'" *Id.* at 561-62. Again, Plaintiffs' opposition brief here musters no response to these points, which are devastating to their position.

Plaintiffs also tout allegations about a January 2021 letter agreement between FHFA, as Conservator, and Treasury directing that Treasury's dividends "be added to the liquidation preference" instead of being paid in cash. Opp. at 22 (citing ECF No. 106-1 ¶ 90). Far from helping Plaintiffs, that letter agreement is an "inconvenient fact," to put it mildly, for their theory. *Bhatti*, 646 F. Supp. 3d at 1015. It would make no sense to *build up* the liquidation preferences if the overarching plan was to *eliminate* them. *See Collins*, 642 F. Supp. 3d at 585 (finding Plaintiffs' theory fundamentally implausible because "[u]nder both Directors Watt and Calabria, FHFA took similar steps to . . . to *increase* Treasury's liquidation preferences"). That is why the *Collins* plaintiffs told the Supreme Court that the January 2021 letter agreement "makes it impossible for the Companies to raise additional capital" and "only further entrenched Treasury's status as the sole shareholder that can ever receive a return on its investment." Letter in Response of Patrick J. Collins, *Collins v. Yellen*, No. 19-422 (U.S. Mar. 31, 2021), *available at* https://tinyurl.com/3d68c8t3. This is yet another contradiction that Plaintiffs make no attempt to reconcile or explain.

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Plaintiffs' failure to grapple with their theory's myriad flaws and inconsistencies—which six previous courts have found—speaks volumes. Nearly five years ago, this Court's prior opinion granting Defendants' motions to dismiss remarked that "[t]hus far, . . . all attempts to unwind the [Third Amendment] have failed in courts across the country. This case is headed for the same result." ECF

No. 66 PageID.1758. The Court should now confirm that the same holds true for this case today in its current posture.

CONCLUSION

For the foregoing reasons, this Court should grant FHFA's motion for judgment on the pleadings and dismiss this case with prejudice.

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Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing complies with Local Rule 7.2(b)(i), and contains 4,463 words, including headings, footnotes, citations, and quotations. The foregoing word count was generated using Microsoft Word 365.

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