

Attachment 1

UNITED STATES COURT OF FEDERAL CLAIMS

JOSHUA J. ANGEL, on behalf of himself and all others
similarly situated,

Plaintiff,

v.

THE UNITED STATES,

Defendant.

20-737 C

No. _____

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"), brings this class action against the United States due to the United States Department of Treasury ("Treasury"); (a) taking Fannie Mae and Freddie Mac funds which should have remained with the GSEs, and (b) breaching the federal government's guaranty of contractually mandated Fannie Mae and/or Freddie Mac non-cumulative preferred ("Junior Preferred") share payments.¹ 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 other actions and court filings), speeches, studies, books, and Plaintiff's and its counsel's investigation.

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.

I. INTRODUCTION

1. Plaintiff brings this action on behalf of himself and all others who hold 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) unconstitutional taking of GSE funds, which by contract should have remained with the companies for post conservatorship payment of Junior Preferred passed dividend payments, and (b) breach of the federal government guaranty of Junior Preferred share contractually mandated payments, such as declared but unpaid dividends, and share redemptions at par in the event of liquidation (the “Implicit Guaranty”).²

2. Fannie Mae’s and Freddie Mac’s respective certificates of designations (collectively, “CODs”), require their respective Board of Directors to make reasonable, good-faith determinations in their “sole discretion” every fiscal quarter as to whether or not to declare a dividend payment on the Junior Preferred shares.³

3. Upon information and belief, Treasury directed that GSE directors ignore Junior Preferred share contractual entitlements as they exercised their “sole discretion” as to whether or

² 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).

³ See, e.g., Fannie Mae, Exhibit to Current Report (Exhibit 4.1 to Form 8-K), 2(a) (Oct. 4, 2007) (hereinafter, the “Series Q”) (“[H]olders ... will be entitled to receive, when, as and if declared by the Board of Directors of Fannie Mae ..., in its sole discretion out of funds legally available therefor, non-cumulative quarterly dividends”) (emphasis added); Freddie Mac, Offering Circular, A-2 (Nov. 29, 2007); Fannie Mae, Exhibit to Current Report (Exhibit 4.2 to Form 8-K), 2(a) (Sept. 11, 2008) (same). The CODs incorporate the GSEs’ respective corporate charters, bylaws, and the corporate law of the respective states under which the GSEs are regulated—Delaware in the case of Fannie Mae and Virginia in the case of Freddie Mac.

not to declare preferred share dividend payments quarter by quarter beginning January 1, 2013 was in circuitous breach of Treasury's Implicit Guaranty of Junior Preferred payments.⁴

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. The Senior Preferred shares are superior to the GSEs' Junior Preferred shares with respect to priority of payment and that they are cumulative. At all times, the sole holder of the Senior Preferred shares was and is Treasury.

5. The SPSPAs, and the first, and second amendments thereto, defined the "dividend amount" for the Senior Preferred shares to mean ten percent of the then-current liquidation preference (*i.e.*, 10% of par value).

6. Section 5.1 of the SPSPAs require the GSEs' respective Board of Directors to obtain Treasury's "prior written consent" before the GSEs' could "declare or pay any dividend" (other than the aforementioned Senior Preferred dividend), or "set aside any amount for any such purpose."⁵

⁴ Stated simply T having guaranteed F's preferred share contractually mandated payments such as declared but unpaid dividends cannot avoid breaching its guarantee of such payment by directing D not to declare or seek permission to declare dividends.

⁵ "Under the SPSPAs, Treasury's financial support is in the form of an equity investment in the Enterprises. 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).

7. While the SPSPA requirement of Treasury's "prior written consent" modified the GSEs' respective director obligations regarding the declaration and payment of Junior Preferred dividends, it did not eliminate such obligations. *See, e.g., Series Q, § 2(a).*⁶ It also did not eliminate Treasury's Implicit Guaranty payment thereof.

8. Treasury actions were instrumental in creating a pre-conservatorship, general market perception that GSEs securities (debt and equity) were effectively risk free by virtue of an implicit federal government guaranty of dividend payments (*i.e., the Implicit Guaranty*).⁷

9. This market perception, and the U.S. government's responsibility for the Implicit Guaranty were acknowledged by Treasury Secretary Paulson, at a September 7, 2008 press conference:

"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

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*), the GSEs' directors duty to consider, and seek Treasury written approval for Junior Preferred share dividend declaration without payment, automatically revived itself. That revival was in tandem with director's enlarged duty to consider allocation of GSE quarterly profit amounts available for the Senior Preferred profit dividend sweep, which dividend sweep resulted in Treasury illegal taking of approximately \$16 billion of GSE Junior Preferred dividend property in 5th amendment illegal extraction, and breach of Treasury's in fact contractual guaranty of GSE share payments, quarter by quarter beginning January 1, 2013 to date.

⁶ It would have been unlawful for the SPSPAs to eliminate the Junior Preferred Quarterly Dividend function, because doing so would have unilaterally (and thus, unlawfully) amended the CODs and/or required Directors to breach the CODs. Any purported or effective amendment of the CODs by way of the SPSPA would have to fall within the CODs' circumscribed grounds to be lawful and valid.

⁷ *Ibid*, note 10.

scale and breadth of the holdings of GSE debt and MBS.”
(Emphasis added)

The Third Amendment

10. On August 17, 2012, attendant to the GSEs return to profitability that year, 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, neither altered or otherwise eliminated Junior Preferred share economic covenants, or the GSEs’ respective directors’ duties regarding the declaration and payment of dividends.

12. The Third Amendment neither altered or amended the Implicit Guarantee.

13. The Third Amendment included a “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.

14. Under the Implicit Guarantee, Treasury guaranteed, and was liable to Junior Preferred for share contractual payments such as declared but unpaid dividends and share par value amounts in liquidation.

15. Each quarter beginning January 1, 2013, when Treasury swept the GSE quarterly profits without setting aside funds for Junior Preferred share dividend declaration to be paid post conservatorship, Treasury for that quarter breached the Junior Preferred shares Implicit Guarantee of payment.

16. Treasury quarterly breaches of the Implied Guarantee and actions inconsistent with the Third Amendment’s non-GAAP definition of “net worth, served to inflate the quarterly profit amount available for Senior Preferred dividend, and engorged payments, in approximate total of \$16 billion, between January 1, 2013, and projected as of year-end 2020.

17. Treasury's conduct with regard to the foregoing was particularly egregious because Junior Preferred shares are non-cumulative, and once not declared in each quarterly period for which the Treasury orchestrated the GSEs respective directors ignoring of their duty, (i.e., to make reasonable, good faith determination in their "sole discretion" every fiscal quarter as to whether or not to declare share dividends, or seek Treasury permission to declare Junior Preferred share dividends without payment, the quarterly duty) resulted in those undeclared dividends being irretrievably lost to Junior Preferred shareholders, as the Treasury induced damages continue to run with the share's ownership.

II. THE PARTIES

18. Plaintiff Joshua J. Angel is a resident of New York, and owns Junior Preferred Shares of both Fannie Mae and Freddie Mac in amount in excess of \$10,000.

19. Defendant United States Department of Treasury ("Treasury" or "U.S. Treasury") is an agency or instrumentality 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

20. 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 \$10,000 each. Plaintiff's claims emanate from Treasury's taking out 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.⁸

IV. FACTUAL ALLEGATIONS

A. **The GSEs and their Junior Preferred Shares**

21. 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.⁹ To achieve their goals, the GSEs publicly issue stock and purchase and securitize mortgages as mortgage-backed securities for sale to the public.

22. The Delaware General Corporation Law governs Fannie Mae's corporate governance to the extent that it is consistent with Fannie Mae's enabling legislation and other applicable federal laws and regulations.

23. The Virginia Stock Corporation Act governs Freddie Mac's corporate governance to the extent consistent with its enabling legislation and other applicable federal laws and regulations.

⁸ The Plaintiff in this action is also pursuing contract-based claims against the GSEs and their directors in the United States District Court for the District of Columbia (*Angel vs. Federal Home Loan Mortgage Corporation et. al.*, No. 1:18-Cv.-01142). Plaintiff, in that action, is proceeding under the theory that Plaintiff's contract rights to receive Fannie Mae and Freddie Mac Junior Preferred share payments, were breached by the GSEs and their directors. In this action, by contrast Plaintiff proceeds under the alternative theory that the same contract rights were breached by the Treasury, in tandem with quarter annual Treasury breaches of its guaranty of GSE Junior Preferred share payments beginning January 1, 2013. Plaintiff does not seek a double recovery; Plaintiff merely seeks to ensure that Plaintiff receives damages and compensation to remedy the loss of Plaintiff's contractual shareholder rights. Plaintiff is required to proceed in two separate cases because of the jurisdictional rules governing claims against the government.

⁹ See Timothy Howard, *The Mortgage Wars: Inside Fannie Mae, Big-Money Politics, and the Collapse of the American Dream* 65-70, 84, 85, 93 (2014); Henry M. Paulson, Jr., *On the Brink: Inside the Race to Stop the Collapse of the Financial System* xvii, xx, xxvii, xxxi, xivi, xivii, 13, 150, 397-98, 406 (2d ed. 2013) (hereinafter, "Brink").

24. No federal corporate law governs the GSEs' corporate governance.

25. Pursuant to Delaware and Virginia law, each GSE's charter are incorporated in its contracts, respectively. *See Matulich v. Aegis Commc'ns Grp., Inc.*, 942 A.2d 596, 600 (Del. 2008); Defs.' Br. 20 (ECF No. 11-1).¹⁰

26. Among the securities issued by the GSEs pre-conservatorship are the GSEs' Junior Preferred shares. Each series of the GSEs' respective Junior Preferred Shares, is pursuant to a substantially similar COD. Incorporated in each COD are the respective GSE's charter, bylaws, and governing state law. *See Matulich*, 942 A.2d at 600; Defs.' Br. 20 (ECF No. 11-1).

27. 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.

28. Dividend rights are the defining characteristic of preferred shares. Dividends are payable to shareholders from surplus 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

¹⁰ Citations to "ECF" refer to the electronic docket for the action styled *Angel vs. Federal Home Loan Mortgage Corporation et. al.*, No. 1:18-Cv.-01142.

on company balance sheets, (i.e., preferred dividend payable); and as an expense item on income statement (i.e., preferred dividend expense).

29. 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, while non-declaration conversely serves to increase the profit amount available for Treasury Net Worth.

30. 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.

31. GSEs, Junior Preferred share capital of approximately \$33 billion 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 billion 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.¹¹

B. HERA and Conservatorship of the GSEs

¹¹ In September 2008 Fannie Mae, and Freddie Mac were government directed into federal conservatorship. Attendant thereto the GSEs entered into a senior preferred stock purchase agreement (“SPSPA”) with Treasury, whereby Treasury between September 2008 and July 2012, purchased \$189 billion of the GSEs’ newly issued preferred shares (“Senior Preferred”). Initially intended to fill the GSEs’ balance sheet capital gap at the conservatorship onset, which emanated from GAAP mandated write downs of tax assets, and bad debt loss reserves write ups, the Treasury \$189 billion Senior Preferred share purchase, together existing Junior Preferred shares \$33 billion of capital made for Company GAAP capital surplus (i.e., of funds legally available for GSE Junior Preferred share dividend declaration) in excess of \$223 billion as of year-end 2012, as the GSEs turned themselves around, restored an estimated \$100 billion plus of excessive tax asset write downs, and loss reserve write up to their financial statements, as Fannie Mae and Freddie Mac were once again about to become wildly profitable. The SPSPA was specifically Treasury designed to capture the forecasted wild profitability to itself in exclusion to Junior Preferred share owners, and GSEs’ cash build (i.e., without cash payment). The Third Amendment Net Worth Sweep was in short nothing less than as old-fashioned grab of dollars, intended to avoid Treasury guaranty of GSE Junior Preferred contractually mandated share payments.

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

33. 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").

34. 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.

35. On September 11, 2008 Treasury recognized that the \$413 million pre conservatorship declared/unpaid Junior Preferred share dividend was a legally enforceable liability of a Government Security (i.e., Fannie Mae Junior Preferred shares) with payment assured by the federal government's full faith and credit Implicit Guaranty of payment.¹²

¹² 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 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 billion 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-and-precedents/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.

36. 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."

37. Treasury's quarterly breaches of the contractual obligations in the CODs and Implicit Guaranty, are the essence of the issues herein complained of.^{13 14}

V. CLASS ACTION ALLEGATIONS

38. Plaintiff brings this class action on behalf of itself and the Class pursuant to Federal Rule of Civil Procedure 23(a) and (b)(2) and/or (b)(3) on behalf of itself 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.

¹³ Materials produce in discovery in *Fairholme Funds, Inc. v. United States*, No. 13 Civ. 465 (Fed. Cl.), and later made public, further undermine the government's death spiral narrative. Indeed, those materials reveal that the Net Worth Sweep was adopted not out of a concern that the GSEs would earn too little, but rather out of concern that the GSEs would make *too much* and thus would complicate the Administration's plans to keep Fannie and Freddie in perpetual conservatorship and to prevent their private shareholders from seeing any return on their investments. As a senior White House official stated in an email to a senior Treasury official on the day the Net Worth Sweep was announced, "we've closed off [the] possibility that [Fannie and Freddie] ever[] go (pretend) private again." That same official stated in another email that Peter Wallison of the American Enterprise Institute was "exactly right on substance and intent" when he said that "[t]he most significant issue here is whether Fannie and Freddie will come back to life because their profits will enable them to re-capitalize themselves and then it will look as though it is feasible for them to return as private GSEs backed by the government. . . . What the Treasury Department seems to be doing here . . . is to deprive them of all their capital so that doesn't happen." An internal Treasury document dated August 16, 2012, expressed the same sentiment: "By taking all of their profits going forward, we are making clear that [Fannie and Freddie] will not ever be allowed to return to profitable entities" These actions were totally contrary to the proper functioning of a conservatorship." See Complaint, *Perry Capital LLC v. United States*, No. 18 Civ. 1226 (Fed. Cl. Aug. 15, 2018), ECF No. 1.

¹⁴ 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).

39. 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.

40. 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

(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.

41. 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.

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

43. 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.

44. 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 BREACH OF CONTRACT

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

46. The Junior Preferred CODs are valid contracts that govern the rights and duties of Directors and the Junior Preferred Shareholders with respect to the Junior Preferred Shares.

47. At all times herein relevant Treasury guaranteed Fannie Mae, and Freddie Mac Junior Preferred share payments.

48. The Third Amendment could not and did not eliminate the Junior Preferred's contract rights including the Implicit Guarantee.

49. The Third Amendment did not breach Junior Preferred's contract rights,

50. Rather, it was Treasury's quarterly disregard of its Junior Preferred share Implicit Guarantee of contractually mandated payments and excessive Net Worth Sweep takings that breached Junior Preferred shareholder contract rights.

51. Treasury actions beginning January 1, 2013, as aforesaid, caused Fannie Mae Junior Preferred shares to suffer damages for contractual breach of approximately \$15 billion to date.¹⁵

**COUNT II
BREACH OF IMPLIED COVENANT OF GOOD FAITH
AND FAIR DEALING**

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

53. Treasury guaranty of Fannie Mae, and Freddie Mac Junior Preferred share payments contain an implied covenant of good faith and fair dealing, which requires each party to avoid unreasonable or bad-faith conduct that would deprive the other parties of the fruits of the contract.

54. That implied covenant requires the contracting parties to deal reasonably, fairly, and in good faith in the discharge of their respective contractual duties.

55. Treasury committed a willful, bad-faith, and unreasonable breach its payment guaranty implied covenant, quarter by quarter after January 1, 2013 in effecting the GSEs' directors' outsized profit sweep dividends of approximately \$16 billion to date to its Senior Preferred shares.

¹⁵ 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).

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 \$16 billion in compensatory damages to the Class against Treasury;
- C. Award prejudgment and post-judgment interest on those compensatory damages;
- D. Award Plaintiff reasonable attorneys' fees (based on a percentage of not less than 1% nor more than 2% of the awarded damages) and costs; and
- E. Order such other relief as this Court deems just and equitable.

Dated: June 8, 2020
New York, New York

Joshua J. Angel
2 Park Avenue
New York, New York 10016
917-710-2107
joshuaangelnyc@gmail.com



Joshua J. Angel (*Plaintiff pro se*)