

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

Joshua J. Angel, on behalf of himself and all other
similarly situated Federal National Mortgage Association
Preferred Stock Shareholders,

Plaintiff,

v.

Federal National Mortgage Association, Egbert L.J. Perry,
Amy E. Alving, William T. Forrester, Brenda J. Gaines,
Frederick B. Harvey III, Robert H. Herz, Timothy J.
Mayopoulos, Diane C. Nordin, Jonathan Plutzik, and David
H Sidwell,

Defendants.

Civil Action No: _____

Class Action

CLASS ACTION COMPLAINT

Joshua J. Angel, on behalf of himself and all other similarly situated Federal National Mortgage Association preferred stock shareowners (the "Class Members," or the "Plaintiffs"), by and through the undersigned counsel, submits this Class Action Complaint against Federal National Mortgage Association ("Fannie Mae," or the "Company"), and the Company's Directors, Egbert L.J. Perry, Amy E. Alving, William T. Forrester, Brenda J. Gaines, Frederick B. Harvey III, Robert H. Herz, Timothy J. Mayopoulos, Diane C. Nordin, Jonathan Plutzik, and David H Sidwell (the "Directors," and collectively with Fannie Mae, the "Defendants").

NATURE AND SUMMARY OF THE ACTION

1. This is a class action brought by Joshua J. Angel, on behalf of himself and all holders of Fannie Mae preferred stock, other than the United States Department of the Treasury ("Treasury") as holder of Fannie Mae Senior Preferred Stock (defined below), for damages

incurred in connection with Fannie Mae's August 17, 2012 entry into the third amendment (the "Net Worth Sweep") to the September 6, 2008 Senior Preferred Stock Purchase Agreement (the "SPSPA") with Treasury and the Federal Housing Finance Agency ("FHFA"), as conservator of Fannie Mae on behalf of Fannie Mae.

2. Mr. Angel is an owner of publicly traded Fannie Mae preferred stock, which is explicitly governed by Delaware law. This Class Action Complaint asserts claims on behalf of Mr. Angel and the other Class Members for damages under, *inter alia*, the Delaware General Corporation Law (the "DGCL") and the common law of Delaware emanating from the Defendants' breach of contractual and fiduciary duties owed to the Class Members.

3. Fannie Mae, through its Directors, entered into the Net Profit Sweep without *bona fide* business purpose, and without concurrently restoring preferred share dividend payments, in breach of the Defendants' contractual and fiduciary obligations to the Class Members. Furthermore, the payment of Net Profit Sweep dividends to Treasury in excess of 10% without concurrent dividend payments being made to the Class Members was in breach of the Class Members' contractual entitlement to receive declared dividend payments and stated principal repayment, based upon the implicit federal government guaranty of preferred shares payments.

4. Fannie Mae was chartered by the United States Congress, and although the federal government did not directly guarantee, the securities or other obligations of Fannie Mae it did implicitly guaranty repayment, *inter alia*, of the Company's debt and preferred share financial obligations as well as those of its sister government sponsored entity Federal Home Loan Mortgage Corporation ("Freddie Mac," and collectively with Fannie Mae, the "GSEs").

5. World financial markets and investor perception of the federal government's implicit guaranty of payment of the GSEs financial obligations (i.e., debt and preferred shares)

arose over time by a combination their statutory designation as “government securities” coupled with government complicity in allowing the securities to be marketed as risk-free investments protected by the federal government’s implicit guaranty of payment.

6. The federal government’s implicit guaranty of GSEs preferred shares were critical to the GSEs’ ability to market and successfully sell approximately \$22 billion of preferred shares as riskless perpetual capital suitable for financial institution tier one capital ownership in the pre-conservatorship period between late 2007 and May 2008. Fannie Mae’s ability to sell \$4.8 billion of its preferred shares less than four months prior to the Company’s September 6, 2008, entry into conservatorship was the undoubted result of market acceptance and reliance on: (a) the federal government’s implicit guaranty; and (b) Treasury promotion of the shares as essentially risk free capital repositories suitable for bank and other conservative financial investors in an otherwise turbulent financial market.

7. In July 2008, James Lockhart, Director of the Office of Federal Housing Enterprise Oversight (“OFHEO”) and subsequently the Director of FHFA, certified both Fannie Mae and Freddie Mac as being “adequately capitalized.” Following the OFHEO certification, on August 8, 2008, the Board of Directors of Fannie Mae announced its declaration of a third quarter \$413 million dividend on its preferred shares with payment to be made by September 30, 2008.

8. Shortly after declaring the dividend payment for preferred shares, FHFA placed the GSEs into conservatorship, and Director Lockhart announced that the September 30, 2008 dividend payment was being cancelled.

9. Treasury was then alerted to the fact that a failure by Fannie Mae to timely pay the \$413 million of preferred stock dividends which had been declared on August 8, 2008, would

result in Fannie Mae's being in breach of the shares' implicit government guaranty of payment. Consequently, on September 11, 2008, Treasury issued an announcement wherein it referenced the shares implicit guaranty, and corrected Secretary Paulson's and Director Lockhart's joint preferred share dividend suspension. The September 11th Treasury announcement included the following language: "Contracts are respected in this country as a fundamental part of rule of law", and "Dividends actually declared by a GSE before the date of the senior preferred stock purchase agreement [i.e., the \$413 million third quarter Fannie Mae preferred dividend] will be paid on schedule."

10. Treasury's September 11, 2008 announcement and its direction to Fannie Mae to pay the \$413 million preferred share dividend implicitly confirmed that, even as of September 6, 2008 (when the GSEs entered conservatorship) (i) GSE preferred shares enjoyed the same implicit guaranty of payment as did the GSE's debt obligations, and (ii) the preferred share guaranty continues fully extant today.

JURISDICTION AND VENUE

11. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1452(c), 1723a(a) and 4617, as well as 28 U.S.C. § 1331. In addition, this Court has subject matter jurisdiction under 28 U.S.C. § 1332(d)(2)(A) in that Plaintiff and Defendants are citizens of different states and the matter in controversy exceeds \$5 million, exclusive of interest and costs. The Court also has subject matter jurisdiction over claims asserted herein pursuant to 28 U.S.C. § 1367(a).

12. Venue is proper in this district under 28 U.S.C. § 1391(e)(1)(C) because the nominal defendant resides in this district, and no real property is involved in the action.

THE PARTIES

13. Mr. Angel, a citizen of New York holds Fannie Mae preferred stock.

14. Defendant Fannie Mae is a federally chartered, privately owned company with its principal executive offices located at 3900 Wisconsin Avenue, NW (MS 1H 2S 05) Washington, DC 20016-2892.

15. Defendants Egbert L.J. Perry, Amy E. Alving, William T. Forrester, Brenda J. Gaines, Frederick B. Harvey III, Robert H. Herz, Timothy J. Mayopoulos, Diane C. Nordin, Jonathan Plutzik, and David H Sidwell are Fannie Mae corporate directors with addresses unknown, other than care of Fannie Mae at 3900 Wisconsin Avenue, NW (MS 1H 2S 05) Washington, DC 20016-2892.

FACTS

A. The Company

16. Fannie Mae is a government-sponsored enterprise founded in 1938 during the Great Depression and, since 1968, a publicly traded company. Fannie Mae's purpose is to expand the secondary mortgage market, allowing lenders to reinvest their assets. Freddie Mac was created as an alternative to Fannie Mae to make the secondary mortgage market more competitive and efficient. The Company is a private corporation that Congress created to increase mortgage market liquidity.

17. Fannie Mae's bylaws designate the DGCL as controlling for purposes of Fannie Mae's corporate governance practices and procedures to the extent not inconsistent with the Company's enabling legislation and other federal laws, rules and regulations. Fannie Mae Bylaws § 1.05 (as amended through January 30, 2009).

B. The Preferred Shares

18. Notwithstanding the Company's government charter, private stockholders owned 100% of Fannie Mae pre-conservatorship. Before the imposition of the 2008 conservatorship, Fannie Mae, in the course of its operations as a privately owned, for-profit entity, issued both

common stock and preferred stock. Pre-conservatorship, the Company's preferred shares were statutorily defined as "government securities" suitable for bank investment as virtually risk free investments. Before 2007, the Company was consistently profitable, and prior to that time, Fannie Mae had never experienced an annual loss. Fannie Mae regularly declared and paid dividends on its preferred stock.

19. Despite the imposition of conservatorship in 2008, the Company continues to have private preferred and common stockholders. The common stock holder ownership interest was diluted but was not otherwise altered by conservatorship except to place plenary management of the Company in the hands of the FHFA as its conservator. Pursuant to the SPSPA, the general public's 100% common stock ownership was diluted to .[]%, and the Treasury by virtue of its warrants, enjoys a *de facto* []% ownership interest in the Company.

20. Under Delaware law, as applied to Fannie Mae, preferred stock designations are deemed as amendments to a corporation's charter, and are therefore generally viewed as contractual in nature. In addition, the corporation, its directors and its officers owe fiduciary duties to preferred stockholders and to the corporate business entity.

21. Quarterly dividends on the \$4.8 billion of preferred shares sold by Fannie Mae in May 2008 composed approximately \$150 million of the \$413 million of preferred dividends which Fannie Mae declared on August 8, 2008 for September 30, 2008 payment.

C. Conservatorship and the Cancellation and Reinstatement of Preferred Share Dividend Payment

22. Beginning in 2007, a global financial crisis and nationwide declines in the housing market caused the GSEs to suffer losses. Despite these losses, the Company remained adequately capitalized and, as described by OFHEO director James Lockhart, "safe and sound."

23. In July 2008, Congress enacted the Housing and Economic Recovery Act of 2008 (“HERA”), and therein created the FHFA to replace OFHEO. HERA, which authorized FHFA to appoint itself as conservator or receiver of the GSEs in certain statutorily specified circumstances, left in place the Company’s federal charters, and did not alter the provisions of their bylaws, implemented pursuant to federal law, specifying that Delaware law apply for Fannie Mae corporate governance purposes. The enactment of HERA, however, did not abrogate the basic contractual and fiduciary duties owed by the Defendants to Plaintiff and the other Fannie Mae preferred share Class Members.

24. HERA was passed not because the GSEs were deemed to be insolvent or operating unsafely at that time, but rather to provide the struggling mortgage and financial markets with added confidence in their improved regulated stability, and oversight. Less than two months after HERA’s passage, and federal regulator public declaration of the GSEs being adequately capitalized, the GSEs were placed under FHFA-directed conservatorship, and the FHFA appointed itself to serve as the GSEs’ conservator. When the conservatorships were announced, FHFA claimed that its goal was to return the GSEs to normal business operations, and that once the GSEs had been restored to a safe and solvent condition, their conservatorships would be terminated.

25. Up until the conservatorship, the GSE’s preferred shares continued to enjoy strong marketability by virtue of the perception they were a virtually risk-free investment as a result of the implicit guaranty, and thus the Fannie Mae was able to sell \$4.8 billion of its preferred shares less than four months prior to the Company’s September 6, 2008, entry into conservatorship.

26. In July 2008, James Lockhart, Director of OFHEO, and subsequently the Director of FHFA, certified both Fannie Mae and Freddie Mac as being “adequately capitalized.” Following the OFHEO certification, on August 8, 2008, the Board of Directors of Fannie Mae announced its declaration of a third quarter \$413 million dividend on its preferred shares with payment to be made by September 30, 2008.

27. On September 6, 2008, FHFA placed the Company into conservatorship and FHFA Director Lockhart the next day, said:

“...in order to conserve over \$2 billion in capital every year, 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.”

28. In order to avoid a Fannie Mae preferred share contractual payment breach, on September 11, 2008, Treasury issued an announcement reversing Secretary Paulson’s and Director Lockhart’s share dividend suspension announcement, and directed that the \$413 million third quarter Fannie Mae preferred dividend be timely paid.

29. When it agreed to conservatorship, the Fannie Mae board of directors ceded control over the Company’s assets, and plenary management power to the FHFA as conservator. Fannie Mae continued to have a “board of directors” appointed by FHFA and reporting to the conservator. HERA however, did not provide license to the Company’s Board of Directors to disregard either their governance contractual obligations, or fiduciary duties to Fannie Mae’s preferred shareholders under Delaware law.

D. Treasury’s Senior Preferred Stock

30. The day after the GSEs conservatorship was FHFA imposed, Treasury exercised its temporary authority under HERA and entered into nearly identical SPSPAs with Fannie Mae, and Freddie Mac. Under the Fannie Mae SPSPA, FHFA agreed to purchase Fannie Mae

securities, and Fannie Mae in turn issued a newly created series of senior preferred shares with a 10% dividend coupon (the “Senior Preferred Stock”). In return for Treasury’s commitment to purchase \$100 billion of Fannie Mae Senior Preferred Stock, Treasury received \$1 billion of Senior Preferred Stock from the Company together with warrants to acquire 79.9% of Fannie Mae’s common stock at a nominal price. Treasury also established a \$100 billion lending facility for the Company, later increased by two subsequent amendments to the SPSPA, to \$200 billion.

31. Each time Fannie Mae draws on the Treasury lending facility, the aggregate liquidation preference of the Company’s senior preferred stock increases by the sum of all additional amounts paid by Treasury to the Company pursuant to the draw. The newly issued Senior Preferred Stock of the Company was ranked senior to all other Fannie Mae series of preferred stock, and entitled Treasury to receive either a cumulative cash dividend of 10% of the “outstanding liquidation preference,” or an “in kind” stock dividend equal to 12%, which amount would be added to the liquidation preference. The terms of the Senior Preferred Stock thus give Fannie Mae the discretion to pay dividends in kind rather than in cash.

32. The Senior Preferred Stock of Fannie Mae has an aggregate liquidation preference equal to \$189 billion plus the sum of all additional amounts drawn by the Company on Treasury’s funding commitment. The warrants provided Treasury with an “upside” return on its investment in the Company, beyond the 10% cash or 12% in-kind dividend on the Senior Preferred Stock, so as to allow Treasury to capitalize from its investment in the Company when it returned to profitability, and exited conservatorship.

33. From the conservatorship onset, Treasury as an investor has exercised de facto control over Fannie Mae through, *inter alia*, its ownership of Senior Preferred Stock, and

warrants to purchase the Company's common stock, as well as by its control of the provision of funds to the Company, consent rights over the Company's repaying the Senior Preferred Stock or exiting conservatorship, and influence over FHFA officials many of whom were employees of Treasury. With such de facto power over the Company's financial condition and operations, Treasury is in a position to, and does, direct FHFA and the Defendants with respect to determinations affecting the Company and its non-senior preferred stockholders.

E. The Net Worth Sweep

34. Fannie Mae returned to profitability in 2012. That year, Fannie Mae earned \$[] billion in profits. The Company with its aggressive accounting losses being reversed became even more profitable in 2013 (\$[] billion) and remained profitable in 2014 (\$[] billion).

35. With the Company having returned to profitability, its stockholders had reason to believe that the Company would eventually be healthy enough to be "return[ed] to normal business operations," as FHFA's director had vowed when the conservatorships were established.

36. Seeking to self-indulge on the Company's strong recovery and avoid reinstatement of GSE junior preferred share dividends, on August 17, 2012, Treasury and FHFA decided to amend the SPSPA such that rather than taking 10% as a dividend on its Senior Preferred shares. Treasury would instead receive the entire positive net worth of the GSEs quarter by quarter in perpetuity (i.e., the Net Worth Sweep).

37. By mid-2012, Fannie Mae and Freddie Mac began to experience a vigorous recovery, earning profits of \$7.8 billion and \$3.5 billion, respectively, in the first half of the year alone. Prior to August 2012 the Defendants knew that many of FHFA's early write-downs, including valuation allowances for deferred tax assets, would soon be reversed and generate massive profits. Given the projected return to profitability, Defendants knew that those valuation

allowances would likely be reversed, a decision that would add tens of billions of dollars to the Fannie Mae and Freddie Mac balance sheets and eventually require the resumption of good faith board of director declaration, and company payment of dividends to Freddie Mac's preferred shareholders.

38. The Net Worth Sweep was devised by Treasury with Defendants' knowledge and with Defendants' assistance, so as to allow Treasury to receive in perpetuity all of the GSEs' future profits, and at the same time avoid the junior preferred shares' federal government implicit contractual guaranty of dividend payments and stated capital repayment.

39. The New Worth Sweep stripped Fannie Mae of its ability to rebuild its capital reserves, or to ever again distribute contractual dividends to preferred stock Class Members in anticipatory, actual and ongoing breach of the preferred shareholder Class Member contractual entitlement to receive dividends, and stated principal payments.

40. Fannie Mae's director sanctioned entry into the Net Worth Sweep rendered junior preferred stock dividend and stated principal payments impossible.

41. No consideration was paid to Fannie Mae or its preferred stockholders in exchange for the Net Worth Sweep. Specifically the amendments, and the corresponding Amended and Restated Senior Preferred Stock Certificate of Designation provide, in pertinent part, as follows:

. . . For each Dividend Period from January 1, 2013, holders of outstanding shares of Senior Preferred Stock shall be entitled to receive, ratably, when, as and if declared by the Board of Directors, in its sole discretion, out of funds legally available therefor, *cumulative* cash dividends in an amount equal to the then-current Dividend Amount.

* * *

For each Dividend Period from January 1, 2013, through- and including December 31, 2017, the "Dividend Amount" for a

Dividend Period means the amount, if any, by which the Net Worth Amount at the end- of the immediately preceding fiscal quarter, less the Applicable Capital Reserve Amount, exceeds zero. *For each Dividend Period from January 1, 2018,-the "Dividend Amount" for a Dividend Period means the amount, if any, by which the Net Worth Amount at the end of the immediately preceding fiscal quarter exceeds zero.* In each case, "Net Worth Amount" means (i) the total assets of the Company (such assets excluding the Commitment and any unfunded amounts thereof)-as reflected on the balance sheet of the Company as of the applicable date set forth in this Certificate, prepared in accordance with GAAP, less (ii) the total liabilities of the Company (such liabilities excluding any obligation in respect of any capital stock of -the Company, including this Certificate), as reflected on the -balance sheet of the Company as of the applicable date set forth in this Certificate, prepared in accordance with GAAP. "Applicable Capital Reserve Amount" means, as of any date of determination, for each Dividend Period from January 1, 2013, through and including December 31, 2013, \$3,000,000,000; and for each Dividend Period occurring within each 12-month period thereafter, \$3,000,000,000 reduced by an equal amount for each such 12-month period through and including December 31, 2017, so that for each Dividend Period from January 1, 2018, the Applicable Capital Reserve Amount shall 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 for such Dividend Period.

(emphasis supplied).

42. The above-quoted provisions from the SPSPA third amendment implementing the Net Worth Sweep from January 1, 2013 through December 31, 2017, require the Company to pay to Treasury, a purported "dividend," equal to the Company's "Net Worth Amount" (i.e., total assets less total liabilities) less the "Applicable Capital Reserve Amount" (which starts at \$3 billion and decreases to \$0 by January 1, 2018). Beginning January 1, 2018 and continuing in perpetuity, the Net Worth Amount will be paid out each quarter to Treasury without any capital reserve whatsoever.

43. The Net Worth Sweep "dividends" are cumulative. If the Net Worth Amount is greater than zero and the board of directors does not declare a "dividend" on the Senior Preferred

Stock, then the “dividend” accumulates. Under the Certificates of Designation, no dividends may ever be paid on any other classes or series of stock of the Company unless and until full cumulative “dividends” (*i.e.*, the full Net Worth Sweep amount) are paid on the Senior Preferred Stock pursuant to the Net Worth Sweep. Because the entire net worth of the Company is payable in perpetuity to the Senior Preferred Stock, there necessarily will be no remaining assets from which dividends ever could be paid on other classes or series of stock.

44. The Net Worth Sweep which the Defendants effected constituted a massive expropriation of value from Fannie Mae to Treasury without fair consideration flowing to Fannie Mae, and the Plaintiff Class Members.

45. The Net Worth Sweep resulted in historic payments to the Treasury of more than \$130 billion of excessive (*i.e.*, greater than 10%) GSE dividend payments to Treasury.

46. Nevertheless, under the SPSPA, even those substantial payments do not reduce the GSEs obligation to Treasury, since the payments cannot be used to offset prior Treasury draws. Accordingly, Treasury still maintains a liquidation preference of \$[] billion with respect to Fannie Mae (\$[] billion in draw-downs plus the initial liquidation preference of \$1 billion). As a result of the Net Worth Sweep, Fannie Mae has no way to ever pay dividends on Class Member preferred shares, redeem those shares or even pay down the SPSPA liquidation preference, no matter how much the Company earns, or how much cash it contributes to Treasury’s coffers.

47. *Even more ethically troublesome is Treasury amnesia regarding its moral responsibility to effect junior preferred share dividend, and stated value repayment in light of its complicity in the marketing of the preferred shares as a virtually risk free investment by virtue of the implicit guaranty.*

F. The Net Worth Sweep Breached the Contract Rights of Preferred Shareholders to Receive Dividends

48. Prior to the conservatorship imposition Fannie Mae issued several series of preferred stock that are, as a result of the PSPAs, subordinate to Treasury's Senior Preferred Stock.

49. Prior to conservatorship, and today the Company's preferred stock was purchased, traded and held by private investors such as pension funds, community banks, insurance companies, and individual investors. Each class and series of Fannie Mae's preferred stock has its own contractual dividend rate and liquidation value.

50. Prior to the creation and issuance of the Senior Preferred Stock, each series of Fannie Mae preferred stock ranked on a parity with all other issued and outstanding series of Fannie Mae preferred stock as to the payment of dividends and the distribution of assets upon dissolution, liquidation, or winding up of Freddie Mac. In other words, each series of Freddie Mac preferred stock carried equal liquidation preferences (or their respective pro rata portions thereof) upon dissolution, liquidation, or winding up of Freddie Mac. Prior to the creation and issuance of the Senior Preferred Stock, the Companies regularly declared and paid dividends on each series of their respective preferred stock.

51. The Net Worth Sweep eliminated the Company's preferred stockholders' contractual rights to receive dividends out of lawfully available corporate funds, if and when declared by the Company's board of directors, and to receive a pro rata distribution of any liquidation proceeds available after Treasury received full recovery of the face amount of the Senior Preferred Stock. Thus, the Net Worth Sweep amended, altered, and repealed the terms of the Certificates of Designation, *e.g.*, the contractual terms governing the Company's preferred stockholders' rights to receive dividends and liquidation distributions, in a manner that

materially and adversely affected-indeed, completely destroyed-the rights and interests of the holders of the Company's preferred stock. The Net Worth Sweep did not merely give preferential dividend rights to a senior security. Rather, its terms expropriated all of the Company's earned net worth in perpetuity to the Senior Preferred Stock, thus fundamentally altering and repealing rights, powers, and preferences of the other series of preferred stock of the Company. Indeed, upon entering into the Net Worth Sweep, Treasury stated that the "quarterly sweep of every dollar of profit that each firm earns going forward" would make "sure that every dollar of earnings that Fannie Mae and Freddie Mac generate will be used to benefit taxpayers" and FHFA, in its 2012 report to Congress, stated that the Net Worth Sweep "ensures all the [Company's] earnings are used to benefit taxpayers" and "reinforces the fact that the [Company's] will not be building capital."

52. In addition to their explicit terms, inherent in the certificates of designation governing the other series of the Company's preferred stock was an implied covenant by Fannie Mae and Freddie Mac to-deal fairly with the holders of preferred stock and to fulfill the issuers' contractual obligations and the stockholders' reasonable contractual expectations in good faith, *e.g.*, an implied promise that the Company would not take actions that would make it impossible for the holders of the Freddie Mac preferred stock to realize any value from their dividend and liquidation rights. FHFA, acting in its purported capacity as conservator of the Company, acted unfairly and in bad faith with respect to the holders of the Company's preferred stock and breached the Company's implied covenant of good faith and fair dealing by agreeing to the Net Worth Sweep, the purpose and effect of which was to make it impossible for the holders of the Company's preferred stock to realize any value from their dividend and liquidation rights, and

thus to deny the holders of the Company's preferred stock the fruits of their agreements with the Company.

G. Defendants Violated Their Fiduciary Duties to Preferred Shareholders By Entering Into the New Worth Sweep and Making Payments Thereunder

53. Federal law obligates the Company to designate a body of law elected for its corporate governance practices and procedures, to the extent not inconsistent with its federal charter and other federal law, rules, and regulations. Fannie Mae designated the corporate law of the State of Delaware. Pursuant to federal law incorporating Delaware law, Fannie Mae's officers and directors owe fiduciary duties of due care and loyalty to Fannie Mae and Fannie Mae's stockholders.

54. The Net Worth Sweep offered no benefits whatsoever to the Company or its stockholders (other than Treasury). Rather, it was an egregiously unfair, self-dealing transaction, the benefits of which flowed entirely to Treasury as the Company is controlling stockholder, and indirectly to FHFA through its status as a sister agency of the federal government.

55. The Net Worth Sweep constituted corporate waste, and was contrary to the best interests of Fannie Mae, and the preferred stockholders Class Member Plaintiffs attendant to its virtual lack of consideration. Indeed, it was specifically intended to ensure that the Company stockholders (other than Treasury) could never again recover any value from their investments, and to ensure that the Company could not function as private enterprise and would have to be wound down in a manner consistent with the Treasury's February 11, 2011 White Paper Calling for the GSEs wind-down.

56. The Net Worth Sweep acceptance was in conflict of interest, and breach, *inter alia*, of the Defendants' duty of loyalty, duty of care, and duty of utmost good faith.

H. The New Worth Sweep Violated the Contract Rights of Preferred Shareholders to Receive Share Repayment Pursuant to the Federal Government's Implicit Guaranty

57. Regarding the GSE's September 6, 2008 entry into conservatorship and execution of the SPSPA's, Treasury Secretary Paulson on September 7, 2008 referenced the government's implicit guaranty of GSEs debt obligations, and Treasury's SPSPA Agreements with the GSEs in a public announcement (the "Paulson Announcement"), stating as follows:

"These Preferred Stock Purchase Agreements (i.e., SPSPAs) 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 powered by the sale and breadth of the holdings of GSE debt and MBS.

58. Secretary Paulson did not directly address the GSEs preferred share's implicit guaranty of payment stating only:

"Similarly, conservatorship does not eliminate the outstanding preferred stock, but *does place preferred shareholders second, after the common shareholders, in absorbing losses.*" [Emphasis Supplied]

- And -

"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 held common or preferred shares of these two GSEs, only a limited number of smaller institutions have holdings that are significant compared to their capital.

59. Immediately following Secretary Paulson's September 7th statement, FHFA Director Lockhart made the following announcement:

". . . in order to conserve over \$2 billion in capital every year, 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.”

60. Financial markets interpreted the September 7, 2008 announcements by Secretary Paulson and Director Lockhart to be a rejection and repudiation of the federal government’s implicit guaranty of GSE’s preferred shares payment, and at the Monday morning market opening GSEs preferred share prices collapsed from their Friday close.

CLASS ACTION ALLEGATIONS

61. With respect to all Counts hereof, Plaintiff brings this action on behalf of himself and the other Class Members, as a class action pursuant to Federal Rules of Civil Procedure 23(a) and 23(b) on behalf of the Class Members consisting of all-persons and entities who hold shares of any series of Fannie Mae preferred stock, and who were damaged by the Defendants’ entry into the Net Worth Sweep and the payments caused by the Defendants to be made thereunder (the “Class”). Excluded from the Class is Treasury.

62. The Class Members are so numerous that joinder of all members is impracticable. The exact number of Class Members is unknown to Plaintiff at this time and can only be ascertained through appropriate discovery. Plaintiff believes that Class Members will number at least in the thousands. Record owners and other members of the class may be identified from records maintained by the Company and/or its transfer agent and may be notified of the pendency of this action by mail, using the form of notice similar to that customarily used in securities class actions.

63. Plaintiff’s claims are typical of the claims of the other members of the Class as all members of the Class hold Fannie Mae preferred stock and were similarly affected by the Defendants’ wrongful conduct that is complained of herein.

64. Plaintiff will fairly and adequately protect the interests of the members of the Class and has retained counsel competent and experienced in class action, derivative and securities litigation. Plaintiff has no interests that are adverse or antagonistic to the class.

65. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. Because the damages suffered by individual members of the Class may be relatively small, the expense and burden of individual litigation make it impracticable for class members individually to seek redress for the wrongful conduct alleged herein.

66. Common questions of law and fact exist as to all members of the Class, and predominate over any questions solely affecting individual members of the Class. Among the questions of law and fact common to the class are:

- a) Whether Defendants breached the terms of the certificates of designation governing the Company's preferred stock;
- b) Whether the Defendants breached the implied covenant of good faith and fair dealing inherent in the certificates of designation governing the Company's preferred stock;
- c) Whether the Defendant's breached their contractual, and fiduciary duties to the Class Members; and
- d) Whether the Defendants are liable for damages to the Class Members, and the proper measure thereof.

67. The prosecution of separate actions by individual Class Members would create the risk of inconsistent or varying adjudications with respect to the individual Class Members, which would establish incompatible standards of conduct for Defendants, or adjudications with respect to individual Class Members that would, as practical matter, be dispositive of the interests of the other members not parties to the adjudications or substantially impair their ability to protect their interests.

68. Defendants have acted on grounds generally applicable to the Class Members with respect to them as a whole.

CAUSES OF ACTION

COUNT I BREACH OF CLASS MEMBER CONTRACTUAL DIVIDEND AND DISSOLUTION LIQUIDATION AND WINDUP PAYMENT

69. Plaintiff incorporates by reference and reallege each and every allegation set forth in this Complaint, as though fully set forth herein.

70. Pursuant to its enabling legislation and Section 1.05 of its bylaws, Fannie Mae has designated that the DGCL controls for purposes of its corporate governance practices and procedures.

71. The certificates of designation for the Fannie Mae preferred stock were and are, for all purposes relevant hereto, contracts between the Class Members and Fannie Mae.

72. The certificates of designation for the Fannie Mae preferred stock provide for contractually specified dividend rights, liquidation preferences, and voting and consent rights with respect to amendments to the terms of the preferred stock.

73. Fannie Mae preferred stockholders—*i.e.*, Plaintiff and the other Class Members—have certain contractual rights. Freddie Mac preferred stockholders are entitled to a contractually specified, non-cumulative dividend and to a contractually-specified liquidation preference. The dividend and liquidation rights of private preferred stockholders are prior to those of common stockholders. Freddie Mac may not pay dividends or make distributions on account of its common stock in any quarter where dividends on preferred stock are not paid in full.

74. By entering into the Net Worth Sweep, and thereafter declaring and paying dividends to Treasury as Senior Preferred Stockholder in excess of 10%, the Defendants breached Fannie Mae's obligations to Plaintiff and the Class Members by nullifying entirely their contractual rights as holders of the Company's preferred stock. As FHFA stated in its 2012 report to Congress, the Net Worth Sweep "ensures all the [Company] earnings are used to benefit taxpayers" and "reinforces the fact that the [Company] will not be building capital." Thus, FHFA's agreement to the Net Worth Sweep and statements indicating that all future Company earnings are to be used to benefit taxpayers breached or repudiated Fannie Mae's contracts with Plaintiff and the other Class Members.

75. The Net Worth Sweep replaced the 10% dividend (if paid in cash) on Treasury's Senior Preferred Stock with a perpetual requirement that Fannie Mae pay its entire net worth to Treasury on a quarterly basis. Amounts in excess of the 10% cash dividend on the Senior Preferred Stock would otherwise have been available to pay dividends to Fannie Mae preferred stock Class Members. The Net Worth Sweep thus strips the Company of its ability to generate and retain funds to pay dividends to holders of Fannie Mae's preferred stock.

76. By expropriating the entirety of the Company's net worth for the government, the Net Worth Sweep rendered the contractual right of the Plaintiff and other Class Members to receive contractual payments of preferred share dividends and stated principal implicitly guaranteed by the federal government with regard to share dividends, and with regard to stated principal, upon the dissolution, liquidation, or winding up of the Company.

77. In short, the Net Worth Sweep effectively eliminated all of the economic rights of Fannie Mae's preferred stock ownership in favor of Treasury's Senior Preferred Stock Net Worth Sweep payments.

78. Fannie Mae is contractually prohibited from unilaterally changing the terms of its junior preferred stock so as to materially and adversely affect the rights of preferred stockholders. The Net Worth Sweep violates this prohibition by effectively eliminating the junior preferred share dividend and repayment of stated principal in a liquidation, dissolution, or windup of the Company.

79. No provision of preferred stockholders' contracts with the Company reserves to Fannie Mae any right to *repudiate or nullify* the Company's federal government implicitly guaranteed contractual dividend payment obligation to junior preferred Class Members and to repay the preferred share stated value in full upon liquidation, dissolution or windup of Company affairs.

80. Defendants have therefore breached the Company's contracts with the Class Members.

81. The Class Member have suffered \$19.13 billion in damages as a direct and proximate result of the Defendants' foregoing breach of contract actions.

COUNT II
BREACH OF IMPLIED COVENANTS OF GOOD FAITH AND FAIR DEALING

82. Plaintiff incorporates by reference and reallege each and every allegation set forth in this Complaint, as though fully set forth herein.

83. As alleged in Count I, the Net Worth Sweep violates the DGCL, which for all purposes relevant hereto, is a contract between the Fannie Mae Preferred Class Members and Fannie Mae.

84. The Certificates of Designation for the Fannie Mae preferred stock were and are, for all purposes relevant hereto, contracts between the Class Members and Fannie Mae.

85. The certificates of designation for the Fannie Mae preferred stock provide for contractually specified dividend rights, liquidation preferences, and voting and consent rights with respect to amendments to the terms of the preferred stock.

86. Inherent in these contracts was, and is, an implied covenant of good faith and fair dealing, requiring Fannie Mae to deal fairly with Plaintiff and the other Class Members, to fulfill their obligations to, and the reasonable contractual expectations of, Plaintiff and the other Class Members in good faith, and not to deprive Plaintiff and the other Class Members of the fruits of their bargain.

87. Defendants were obligated to act consistently with Fannie Mae's responsibilities under the certificates of designation governing its preferred stock.

88. By directing and entering into the Net Worth Sweep, the Defendants effectively deprived Plaintiff and the other Class Members of any possibility of ever again receiving dividends or a liquidation preference, and thus breached the implied covenant of good faith and fair dealing inherent in the certificates of designation for the Freddie Mac preferred stock. Through the implied covenant of good faith and fair dealing, Freddie Mac was prohibited from eliminating the rights and interests of the Class Members with respect to dividends and their liquidation preferences. In effectively eliminating such rights and interests entirely through the Net Worth Sweep, the Defendants acted arbitrarily and unreasonably and not in good faith or with fair dealing toward the Class Members. Defendants were motivated by an improper purpose reflecting bad faith when they agreed to and implemented the Net Worth Sweep, and acted arbitrarily and unreasonably to deprive the Class Members of their reasonable contractual expectations and the fruits of their agreement.

89. The Class Members suffered \$19.13 billion in damages as a direct and proximate result of the Defendants' foregoing breach of the implied covenant of good faith and fair dealing.

COUNT III

DIRECTORS BREACH OF FIDUCIARY DUTIES IN CONCERT WITH THE FHFA AND TREASURY

90. Plaintiff incorporates by reference and realleges each and every allegation set forth in this complaint, as though fully set forth herein.

91. Pursuant to federal law incorporating Delaware corporate law, Fannie Mae's officers and directors owe fiduciary duties of due care and loyalty to Fannie Mae and its stockholders, and a controlling stockholder of Fannie Mae owes fiduciary duties of due care and loyalty to Fannie Mae and its other stockholders.

92. By imposing a conservatorship over Fannie Mae, through which FHFA assumed, *inter alia*, the powers of its officers and directors, FHFA and its Director nominees assumed fiduciary duties of due care and loyalty to Fannie Mae's preferred shareholders and other equity owners, and were and are required to use their utmost ability to control and manage Fannie Mae in a fair, just, honest, and equitable manner. FHFA and the Directors were, and are required to act in furtherance of the best interests of Fannie Mae's preferred shareholders so as to benefit all preferred shareholders equally and not in furtherance of the personal interest or benefit of FHFA, Treasury, the federal government, or the Directors.

93. Treasury, as an investor, exercises *de facto* control over the Company, including through its Senior Preferred Stock and warrants to purchase the Company's common stock, as well as Treasury's control of the provision of funds to the Company, Treasury's consent rights over the Company repaying the Senior Preferred Stock or exiting conservatorship, Treasury's influence over FHFA officials (many of whom were employees of Treasury), and FHFA's self-

appointment as Fannie Mae's conservator, and its Board of Director appointment and control. With such *de facto* power over the Company's financial condition and operations, Treasury is in a position to, and does, direct FHFA and the Director Defendants with respect to determinations affecting the Company and its equity owners. As controlling stockholder of Fannie Mae, Treasury owed fiduciary duties of due care and loyalty to Fannie Mae's other equity owners. For the reasons described herein, Treasury in concert with FHFA and the Director Defendants has breached those fiduciary duties.

94. The Net Worth Sweep constituted an unfair, self-dealing transaction between the Defendants, and Fannie Mae's controlling stockholder. Treasury, as controlling stockholder of Fannie Mae, stood on both sides of the decision to implement the Net Worth Sweep, to the benefit of Treasury and to the detriment of Fannie Mae's preferred stockholders other than Treasury. The Net Worth Sweep effected an improper transfer—an expropriation—of economic value from the Company and its preferred stockholders to Treasury.

95. Through their engagement in the Net Worth Sweep, FHFA, Treasury and the Director Defendants violated Delaware law and applicable federal law by breaching fiduciary duties owed to the Class Members. The Net Worth Sweep transaction was entirely unfair to the Class Members, as it was neither the product of a fair process, nor did it reflect a fair price. Indeed, Fannie Mae received *no consideration whatsoever* in exchange for the Net Worth Sweep.

96. The Net Worth Sweep, which effectively delivers all of Fannie Mae's profits and net worth to Treasury in perpetuity, was granted to the exclusive benefit of Treasury, the FHFA, and the Director Defendants in total detriment of Plaintiff Class Members.

97. As a direct and proximate result of the foregoing breaches of fiduciary duty, the Class Members have suffered \$19.13 billion in damages.

COUNT IV

DEFENDANTS' BREACH OF FIDUCIARY DUTIES

98. Plaintiff incorporates by reference and reallege each and every allegation set forth in this Complaint, as though fully set forth herein.

99. Pursuant to federal law incorporating Delaware corporate law, Fannie Mae's officers and directors owe fiduciary duties of due care and loyalty to Fannie Mae and its stockholders, and a controlling stockholder of Fannie Mae owes fiduciary duties of due care and loyalty to Fannie Mae and its other stockholders.

100. By accepting to become Fannie Mae directors, the Director Defendants assumed fiduciary duties of due care and loyalty to Fannie Mae, and its equity owners in addition to the HERA designated duties owed to the FHFA. In concert, the Director Defendants were and are required to use their utmost ability to control and manage Fannie Mae in a fair, just, honest, and equitable manner. The Director Defendants were and are required to act in furtherance of the best interests of Fannie Mae and its equity owners in fair minded equilibrium and not in furtherance of the personal self-interest or benefit of FHFA, Treasury, or the federal government.

101. The Net Worth Sweep constituted an unfair, self-dealing transaction in favor of Treasury. Treasury (as controlling stockholder of Freddie Mac) and FHFA (as conservator and Fannie Mae board of director control person) stood on both sides of the decision to implement the Net Worth Sweep, to the sole and exclusive benefit of Treasury, and the absolute detriment of Fannie Mae, and the Class Members.

102. The Net Worth Sweep effected an improper transfer—an expropriation—of economic value from the Company to Treasury. Indeed, the Company received *no*

consideration whatsoever in exchange for the Net Worth Sweep. Moreover, as an agency of the federal government, FHFA was interested in and benefited from the Net Worth Sweep, and therefore had a conflict of interest.

103. Through their assent to and ongoing actions under the Net Worth Sweep, the Defendants violated Virginia law and applicable federal law by breaching their fiduciary duties to Fannie Mae, and the Class Members. The Net Worth Sweep transaction was entirely unfair to Fannie Mae and the Class Members, as it was neither the product of a fair process nor did it reflect a fair price.

104. Indeed, the Net Worth Sweep, which effectively delivers all of Fannie Mae's profits and net worth to Treasury in perpetuity, was granted to the exclusive benefit of Treasury, in total detriment to Fannie Mae, and the Class Members.

105. The Net Worth Sweep was neither entirely nor intrinsically fair to Fannie Mae or the Class Members, nor did it further any valid business purpose of Fannie Mae, nor did it reflect a good faith business judgment as to what was in the best interest of Freddie Mac or the Class Members.

106. Because Fannie Mae received ***no consideration whatsoever*** in exchange for agreeing to the Net Worth Sweep, FHFA authorized an exchange that was so one-sided that no business person of ordinary, sound judgment could conclude that Fannie Mae received adequate consideration.

107. The Net Worth Sweep constituted waste, a gross abuse of discretion, and bad faith.

108. As a direct and proximate result of the foregoing breaches of fiduciary duty, the Class Members have suffered \$19.13 billion in damages.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for relief and judgment, as follows:

- A. Determining that this action is a proper class action under Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure on behalf of the Classes defined herein;**
- B. Declaring that Defendants breached the terms of the Certificates of Designation governing the Company's preferred stock;**
- C. Declaring that Defendants breached the implied covenant of good faith and fair dealing inherent in the Certificates of Designation governing the Company's preferred stock;**
- D. Awarding \$19.13 billion in compensatory damages in favor of Plaintiff and the Class Members and against the Defendants for breach of the Class Member contractual rights for dividends and dissolution, liquidation and windup payments, with interest thereon from August 17, 2012;**
- E. Awarding \$19.13 billion in compensatory damages in favor of Plaintiff and the Class Members and against the Defendants for breaches of the Certificates of Designation and the implied covenant of good faith and fair dealing, including interest thereon from August 17, 2012;**
- F. Declaring that Defendants breached their fiduciary duties to the Company and the Class Members;**
- G. Awarding compensatory damages in favor of the Class Members against Defendants, jointly and severally for breach of fiduciary duty, in the amount of \$19.13 billion with interest thereon from August 17, 2012;**
- H. Awarding Plaintiff his reasonable costs and expenses incurred in this action, including counsel fees and expert fees; and**
- I. Such other and further relief as the Court may deem just and proper.**

HERRICK, FEINSTEIN LLP

By: _____
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Attorneys for Plaintiff

Dated: April __, 2016

VERIFICATION

Joshua J. Angel hereby verify that I have authorized the filing of the attached Class Action (the "Complaint"), that I have reviewed the Complaint, and that the facts therein are true and correct to the best of knowledge, information and belief.

I declare under penalty of perjury that the foregoing is true and correct.

DATE: _____