IN THE SUPREME COURT OF THE STATE OF NEVADA

FEDERAL NATIONAL MORTGAGE ASSOCIATION; AND GRANDBRIDGE REAL ESTATE CAPITAL LLC, Appellants, vs. WESTLAND LIBERTY VILLAGE, LLC, A NEVADA LIMITED LIABILITY COMPANY; AND WESTLAND VILLAGE SQUARE, LLC, A NEVADA LIMITED LIABILITY COMPANY, Respondents.	Case No. 82174

APPEAL
From the Eighth Judicial District Court, Department IV,
The Honorable Kerry Earley, District Court Judge
Case No. A-20-819412-C

FEDERAL HOUSING FINANCE AGENCY'S MOTION TO INTERVENE

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INTRODUCTION

The Federal Housing Finance Agency, in its Capacity as the Conservator appointed under the Housing and Economic Recovery Act of 2008 (HERA), Pub. L. No. 110-289, 122 Stat. 2654 (codified as 12 U.S.C. § 4511 *et seq*.) to control Appellant Fannie Mae's operations ("FHFA" or "Conservator"), respectfully moves to intervene into this interlocutory appeal. The appeal concerns a preliminary injunction that not only restrains Fannie Mae but also applies directly to "persons exercising or having control over the affairs of Fannie Mae," which necessarily includes FHFA. Indeed, because FHFA is statutorily empowered as Conservator to "perform all [of Fannie Mae's] functions in [Fannie Mae's] name," 12 U.S.C. § 4617(b)(2)(B)(iii), the injunction purports to restrain the Conservator's powers in the operation of the Fannie Mae conservatorship.

Federal law precludes any such restraint. Specifically, 12 U.S.C. § 4617(f) mandates that "no court may take any action to restrain or affect the exercise of powers or functions of FHFA as a conservator." Therefore, upon intervention, FHFA will ask the Court to dissolve the preliminary injunction. *See* **Exhibit A** (FHFA's Motion to Dissolve Injunction). Although this Court has infrequently permitted intervention on appeal, it is permitted here under both NRS 12.130 and the Court's inherent authority to fairly and judiciously manage the cases before it. In the unique circumstances of this case, this Court should allow FHFA to intervene in this appeal.[1]

[1] FHFA is simultaneously filing a petition for a writ of prohibition directing the district court to dissolve the injunction on the grounds stated herein, among others.

STATEMENT OF FACTS

I. FHFA and the Fannie Mae Conservatorship

Congress chartered Fannie Mae to facilitate the nationwide secondary residential mortgage market. *See* 12 U.S.C. § 1716; *City of Spokane v. Fannie Mae*, 775 F.3d 1113, 1114 (9th Cir. 2014). HERA established FHFA as Fannie Mae's primary regulator.

In September 2008, the Director of FHFA placed Fannie Mae into conservatorship, where it remains to this day. *See* 12 U.S.C. § 4617(a). As Conservator, FHFA succeeded to all of Fannie Mae's rights, titles, powers, privileges, and assets. 12 U.S.C. § 4617(b)(2)(A)(i). The Conservator is statutorily empowered to "preserve and conserve [Fannie Mae's] assets and property," to "operate" Fannie Mae, to "perform all [Fannie Mae's] functions in [Fannie Mae's] name," and to "collect all obligations and money due" Fannie Mae. 12 U.S.C. § 4617(b)(2)(B)(i)-(iv). Congress also mandated that "no court may take any action to restrain or affect the exercise of [FHFA's] powers or functions ... as a conservator." 12 U.S.C. § 4617(f).

II. Procedural Background

On August 12, 2020, Fannie Mae moved to appoint a receiver over two multifamily properties owned by Defendants-Appellees Westland Liberty Village, LLC and Westland Village Square, LLC, respectively. Defendants opposed the receiver application and moved for preliminary injunctive relief to prevent Fannie Mae from foreclosing on the properties or appointing a receiver. APP1291-1324. During an October 13 hearing, the district court issued an oral ruling denying Fannie

Mae's application to appoint a receiver and preliminarily enjoining Fannie Mae from moving forward with any foreclosure actions. *See* APP1497-99. On November 20, the district court entered Defendants' proposed order, granting far more extensive injunctive relief than Defendants had previously requested or argued.

Fannie Mae appealed the injunction in November 2020, and moved to stay its effect in January 2021. On February 11, 2021, this Court stayed only the part of the injunction directing Fannie Mae to remove the notices of default and election to sell from the two properties' titles. Fannie Mae moved for reconsideration with respect to a different section of the injunction on February 26, 2021. *See* APP1511.

ARGUMENT

I. FHFA May Intervene in This Appeal under NRS 12.130

Nevada's intervention statute provides that "*[b]efore trial*, any person may intervene in an action or proceeding, who has an interest in the matter in litigation, in the success of either of the parties, or an interest against both." NRS 12.130(1)(a) (emphasis added). Intervention "is made as provided by the Nevada Rules of Civil Procedure." NRS 12.130(1)(c). This action remains well "before trial," and FHFA satisfies NRCP 24's requirements for both mandatory and permissive intervention.

This Court has not often had the occasion to entertain—much less grant—a motion to intervene into *any* appeal, and so far as FHFA can determine, the Court has never considered a motion to intervene into an *interlocutory* appeal. But nothing in NRS 12.130 precludes it, and the fact that the statute permits intervention at any time "before trial" suggests it is permitted if the other statutory requirements are met. Moreover, the serious ramifications of the district court's unprecedented order

restraining the Conservator's powers in direct contravention of federal law demonstrates the need for immediate intervention.

FHFA is aware of a nearly 75-year-old precedent stating that NRS 12.130 "makes no provision for intervention in the supreme court, in any case, at any stage of the proceedings, or at all." *Stephens v. First Nat'l Bank of Nev.*, 64 Nev. 292 (1947). But that case is readily distinguished—there, the Attorney General sought to intervene into an appeal of a *final judgment*, not an interlocutory appeal. *Id.* at 304-05. And this Court has since held that NRS 12.130 follows the "well-settled principle that intervention may not follow a *final judgment*." *Nalder v. Eighth Jud. Dist. Ct. for Cty. of Clark*, 136 Nev. 200, 203 (2020) (emphasis added).

Here, by contrast, the ongoing district court proceedings are at an early stage; FHFA has contemporaneously sought to intervene in the district court action for the purpose of asserting the federal statutory defenses to preclude the relief Defendants seek in their counterclaims. In the unusual circumstances presented here, *Stephens* does not control, and there is no reason why FHFA cannot become a party.

A. FHFA's Motion Satisfies All Timeliness Requirements

Intervention is permitted under NRS 12.130 where a party seeks to intervene "before trial," NRS 12.130(1)(a), and is "timely" under NRCP 24 where "the procedural posture of the action allows the intervenor to protect its interest," *Estate of Lomastro ex rel. Lomastro v. Am. Family Ins. Grp.*, 124 Nev. 1060, 1070 n.29 (2008), and the prejudice to the applicant of not intervening outweighs any prejudice to the rights of the existing parties from any delay. *Am. Home Assur. Co. v. Eighth Jud. Dist. Ct. ex rel. Cty. of Clark*, 122 Nev. 1229, 1244 (2006).

FHFA satisfies each of these requirements. *First*, there has not been a trial in this case. The litigation is in its early stages and this is an interlocutory appeal, not an appeal from a final judgment. *Second*, the procedural posture allows FHFA to protect all conservatorship interests because this Court has not yet determined whether to affirm or dissolve the injunction. FHFA has timely intervened before this Court has decided Fannie Mae's motion for reconsideration or resolved the appeal on the merits. *Third*, intervention will not prejudice any existing party. The issue FHFA seeks to raise is jurisdictional and therefore could be raised without prejudice at any point—including in an appeal of a final judgment. But every day that an outstanding injunction purports to restrain the Conservator is prejudicial to FHFA's statutory powers, protections, and ability to preserve conservatorship assets, and is violative of federal law. In any event, as merits briefing has not yet begun, FHFA's entry into the case will not delay this Court's resolution of the appeal.

B. FHFA May Intervene by Right under NRCP 24(a)

1. FHFA as Conservator Has an Unconditional Federal Statutory Right to Intervene under Rule 24(a)(1)

Nevada Rule of Civil Procedure 24(a)(1) states that "[o]n timely motion, the court must permit anyone to intervene who: (1) is given an unconditional right to intervene by a state or federal statute …." Whether an intervenor meets the requirements for unconditional intervention is a "holistic, flexible, and highly fact-specific" analysis given that statutes conferring the right of intervention "vary greatly in their terms." 59 Am. Jur. 2d Parties § 157.

FHFA is statutorily empowered, without condition, to "preserve and conserve [conservatorship] assets and property," and to "collect all obligations and money due" the conservatorship. 12 U.S.C. § 4617(b)(2). Intervention here is an exercise of those unconditional powers. Indeed, courts have repeatedly held that the Conservator has a statutory right to intervene under Federal Rule of Civil Procedure 24(a)(1)—which is virtually identical to NRCP 24(a)(1)—in matters where an entity in conservatorship (such as Fannie Mae) is named as a defendant. *See Milwaukee Cty. v. Fannie Mae*, No. 12-c-0732, 2013 WL 3490899, *1 (E.D. Wis. July 10, 2013); *Hertel v. Bank of Am.*, No. 1:11-cv-757, 2012 WL 48680, at *1 (W.D. Mich. Jan. 9, 2012); *Oakland Cty. v. Fannie Mae*, 276 F.R.D. 491, 497 (E.D. Mich. 2011) ("Congress, pursuant to HERA, has granted FHFA a statutory right to intervene," and FHFA therefore need not "coach this litigation from the sidelines.").

2. FHFA Also Has a Right to Intervene under Rule 24(a)(2)

Rule 24(a)(2) applies where a litigant shows that "(1) it has a sufficient interest in the subject matter of the litigation, (2) its ability to protect its interest would be impaired if it does not intervene, (3) its interest is not adequately represented, and (4) its application is timely." *Nalder*, 136 Nev. at 206. As explained above, FHFA's motion is timely. *Supra*, at 4-5. The other three requirements are also satisfied here.

a. FHFA Has a Sufficient Interest in the Litigation

FHFA has a significant interest in this litigation under NRCP 24(a)(2) and NRS 12.130 (requiring an intervening party to have "interest in the matter in litigation, in the success of either of the parties, or an interest against both"). The district court enjoined Fannie Mae and anyone "exercising or having control over

the affairs of Fannie Mae" from taking various actions relating to the properties and to other loans or loan applications by "any Westland entity." *See* APP1508-11. Because FHFA as Conservator has the statutory powers to preserve Fannie Mae's assets and conduct its business, *see* 12 U.S.C. § 4617(b)(2)(B), FHFA has a paramount interest in ensuring that the injunction does not impede its ability to exercise those statutory powers.

The injunction directly and expressly enjoins Fannie Mae and FHFA—which by immediate succession upon conservatorship acquired all rights, titles, powers, privileges, and assets of Fannie Mae, thus exercising control over Fannie Mae—from undertaking appropriate business functions or taking actions to preserve conservatorship assets. For example, the injunction requires Fannie Mae and FHFA to treat Defendants as though they have not defaulted on over $40 million in loans, and precludes Fannie Mae (and FHFA) from taking "any adverse action against any Westland entity," all of which undermines Fannie Mae's (and FHFA's) ability to protect Fannie Mae's interests vis-à-vis Defendants and other unnamed Westland entities. *See* APP 1511; Fannie Mae's Expedited Mot. to Stay Pending Appeal at 16. Injunctive relief that restricts the Conservator's or Fannie Mae's operations or functions conflicts with 12 U.S.C. § 4617(f), which provides that "no court may take any action to restrain or affect the exercise of powers or functions of the Agency as a conservator." The preliminary injunction purports to do just that. FHFA as Conservator thus has a significant interest in these proceedings.

b. FHFA's Ability to Protect Its Interests Will be Impaired

FHFA cannot fully protect its interests as Conservator absent intervention. Courts have held that FHFA is entitled to intervene where a case may impact conservatorship assets or FHFA's statutory authority to preserve and conserve them. *E.g.*, *Hertel*, 2012 WL 6596142, at *3 (FHFA's "ability to protect [its] interest [would be] impaired" where judgment would have negative implications on transfers involving entities in conservatorship); *Oakland Cty.*, 276 F.R.D. at 498 ("[I]ntervention allows [FHFA] the opportunity to protect its interest in Fannie Mae and Freddie Mac's assets"). The injunction here impairs the Conservator's interests, hobbling its ability to manage and protect assets of the Fannie Mae conservatorship and, more specifically, to enforce valid provisions of the loan documents. Simply put, the injunction violates federal law.

c. FHFA's Interests May Not be Adequately Represented

Intervention is necessary to ensure that FHFA's interests as Conservator are adequately represented. "The burden of showing inadequacy of representation is minimal," *Ctr. for Balanced Use v. Montana Wilderness Ass'n*, 647 F.3d 893, 898 (9th Cir. 2011) (internal quotation marks omitted), and is met here. The injunction's constraints on the Conservator go far beyond Liberty Village and Village Square, restraining the Conservator from "any adverse action against any Westland entity in relation to other loans, discriminate against or blacklist any Westland entity on new loan or refinancing applications …." That restraint affects the entire Westland Real Estate Group portfolio, which includes several lines of business across two states,

including 12,000 units in 65 multifamily residential communities in Los Angeles and Las Vegas, 14 manufactured housing communities mostly in Southern California, and 1.4 million square feet of retail space across in Southern California. *See Welcome to Westland*, https://www.westlandrealestategroup.com/ (last visited Mar. 16, 2021). The injunction, by its very terms, encroaches upon FHFA's conservatorship powers well beyond Fannie Mae's interests in the properties at issue. The reach of the injunction merits FHFA's intervention to protect not only the Conservator's rights and powers as to Liberty Village and Village Square, but also to protect FHFA's rights, titles, powers, privileges, and assets, as the Conservator of not only Fannie Mae but also Freddie Mac, now and in the future as to "any Westland entity."

And because the Conservator litigates the scope and application of its powers frequently and routinely, FHFA is best positioned to assert statutory defenses in its capacity as Conservator. *See Hertel*, 2012 WL 6596142, at *3-4. As Conservator, FHFA has a unique perspective on its statutory role. FHFA's presence in this case is necessary to ensure that its interests are adequately represented.

C. Permissive Intervention Under Rule 24(b) Is Also Proper Here

Rule 24 separately permits intervention by anyone who "has a claim or defense that shares with the main action a common question of law or fact" and requires consideration of "whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights." NRCP 24(b)(1); *see Hairr v. First Jud. Dist. Ct.*, 132 Nev. 180, 186-87 (2016).

FHFA's defense shares a common question of law with the main action—whether the district court had jurisdiction to grant the preliminary injunction. Because the issue is jurisdictional, it could be raised at any time without prejudice to any party, but FHFA is doing so at its first reasonable opportunity—shortly after being made aware of the injunction. And because merits briefing is yet to begin, FHFA's intervention will not unduly delay or prejudice the adjudication of the existing parties' rights.

II. The Court Has Inherent Authority to Grant FHFA's Motion to Intervene

The Court's authority to grant FHFA's motion to intervene is clear from NRS 12.130 and NRCP 24. But even if the Court's authority were less certain, the Court could permit FHFA's intervention under its "[i]nherent judicial power." *See Blackjack Bonding v. Las Vegas Municipal Ct.*, 114 Nev. 1213, 1218, (2000). The Court's inherent judicial power includes the ability to "economically and fairly manage litigation," *Borger v. Eighth Jud. Dist. Ct. ex rel. Cty. of Clark,* 120 Nev. 1021, 1029 (2004), so as to "achieve the fair, orderly, and expeditious disposition of cases," *MDB Trucking, LLC v. Versa Prods. Co., Inc.*, 136 Nev. Adv. Op. 72 (2020). In furtherance of these powers, the Court created rules of appellate procedure, which are "liberally construed to … promote and facilitate the administration of justice," NRAP 1(c), and may be suspended for good cause, NRAP 2.

If necessary, the Court could and should exercise its inherent authority to permit FHFA to intervene in this appeal for the reasons explained above.

CONCLUSION

The Court should grant FHFA's motion to intervene in this appeal.

Dated this 25th day of March, 2021.

Respectfully submitted,

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CERTIFICATE OF SERVICE

Pursuant to NEFCR 9(b)(d)(e), I certify that on March 25, 2021, a true and correct copy of the **FEDERAL HOUSING FINANCE AGENCY'S MOTION TO INTERVENE,** was transmitted electronically through the Court's e-filing system to the attorney(s) associated with this case.

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Exhibit A

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IN THE SUPREME COURT OF THE STATE OF NEVADA

FEDERAL NATIONAL MORTGAGE ASSOCIATION; AND GRANDBRIDGE REAL ESTATE CAPITAL LLC, Appellants, vs. WESTLAND LIBERTY VILLAGE, LLC, A NEVADA LIMITED LIABILITY COMPANY; AND WESTLAND VILLAGE SQUARE, LLC, A NEVADA LIMITED LIABILITY COMPANY, Respondents.	Case No. 82174

APPEAL
From the Eighth Judicial District Court, Department IV,
The Honorable Kerry Earley, District Court Judge
Case No. A-20-819412-C

PROPOSED INTERVENOR FEDERAL HOUSING FINANCE AGENCY'S MOTION TO DISSOLVE INJUNCTION

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INTRODUCTION

This case arises out of a lawsuit by Federal National Mortgage Association ("Fannie Mae") seeking to appoint a receiver for two multifamily properties in which Appellees Westland Liberty Village, LLC and Westland Village Square, LLC (together, "Defendants") hold title and Fannie Mae holds a security interest. The district court denied Fannie Mae's application for a receiver and granted Defendants' request for a preliminary injunction against Fannie Mae and other "Enjoined Parties," including the Federal Housing Finance Agency ("FHFA"), the Conservator of Fannie Mae. The injunction prohibits foreclosure on Defendants' properties, certain loan-management tasks, and a variety of actions concerning not only Defendants' properties but the properties, loans, or loan applications of "any Westland entity," not just those in Nevada and not just those named in this action.

The district court lacked jurisdiction to enter the injunction. The Housing and Economic Recovery Act of 2008 ("HERA") created FHFA and authorized it to serve as Fannie Mae's Conservator. *See* 12 U.S.C. § 4511 *et seq*. FHFA's Director placed Fannie Mae into conservatorship in September 2008. Under HERA, FHFA as Conservator has the power to "operate" and "perform all functions of" Fannie Mae. 12 U.S.C. § 4617(b)(2)(B)(i). Congress also mandated that "no court may take any action to restrain or affect the exercise of powers or functions of [FHFA] as a conservator …." 12 U.S.C. § 4617(f). As this Court is aware from Federal Foreclosure Bar cases (12 U.S.C. § 4617(j)(3)), HERA's conservatorship protections extend to Fannie Mae while under FHFA's conservatorship because the Conservator has "succeed[ed]" to Fannie Mae's

interests and is empowered to "preserve and conserve" Fannie Mae's "assets and property." 12 U.S.C. § 4617(b)(2). Thus, Section 4617(f) bars the injunctive relief the district court purported to impose upon Fannie Mae and its Conservator here.

Proposed Intervenor FHFA respectfully moves to dissolve the injunction.

RELEVANT FACTS

I. Fannie Mae Under FHFA's Conservatorship

Congress chartered Fannie Mae to facilitate the nationwide secondary mortgage market to enhance the equitable distribution of mortgage credit. *See* 12 U.S.C. § 1716; *City of Spokane v. Fannie Mae*, 775 F.3d 1113, 1114 (9th Cir. 2014). HERA established FHFA as the primary regulatory and oversight authority of Fannie Mae and the Federal Home Loan Mortgage Corporation ("Freddie Mac") (together, "the Enterprises").

In September 2008, FHFA's Director exercised statutory authority to place Fannie Mae and Freddie Mac into conservatorship, where they remain to this day. *See* 12 U.S.C. § 4617(a). As Conservator, FHFA succeeded to "all [of Fannie Mae's] rights, titles, powers, and privileges" regarding its property. *See* 12 U.S.C. § 4617(b)(2)(A)(i). FHFA has comprehensive authority as Conservator to "preserve and conserve the assets and property of [Fannie Mae]," *id*. § 4617(b)(2)(B)(iv); "collect all obligations and money due" Fannie Mae, *id*. § 4617(b)(2)(B)(ii); "take over the assets of and operate [Fannie Mae] with all the powers of the shareholders, the directors, and the officers," *id*. § 4617(b)(2)(B)(i); "conduct all business of [Fannie Mae]," *id.*; and "perform all functions of [Fannie Mae] in the name of [Fannie Mae]," *id*. § 4617(b)(2)(B)(iii).

Congress precluded judicial review of the Conservator's activities, providing that: "no court may take any action to restrain or affect the exercise of powers or functions of the Agency as a conservator." 12 U.S.C. § 4617(f).

II. Procedural History

On August 12, 2020, Fannie Mae sued Defendants, seeking appointment of a receiver over the properties at issue. Defendants opposed the receiver application and filed a counter-motion for injunctive relief, seeking to prevent Fannie Mae from foreclosing on the properties or appointing a receiver. APP1291-1324. During an October 13 hearing, the district court issued an oral ruling denying Fannie Mae's application to appoint a receiver and preliminarily enjoining Fannie Mae from proceeding with any foreclosure actions. *See* APP1497-99.

On November 20, the district court entered Defendants' proposed written order, granting extensive injunctive relief not requested in Defendants' counter-motion and beyond that which had been discussed and ordered by the Court at the hearing. The injunction covers not only Fannie Mae, but also "Enjoined Parties," including "persons exercising or having control over the affairs of Fannie Mae," which includes FHFA, a non-party. APP1508 § 1. The injunction prohibits activities furthering foreclosure on Defendants' two properties, APP1508-10 §§ 1-3, 5(b)-(c), and prohibits the Enjoined Parties from other adverse actions with respect to Westland's entire portfolio.[1] APP1508-11 §§ 4, 5(d)-(o).

[1] That portfolio includes 12,000 units in 65 multifamily residential communities in Los Angeles and Las Vegas, 14 manufactured housing communities mostly in Southern California, and 1.4 million square feet of retail space in Southern California.

Fannie Mae appealed the injunction in November 2020, and moved to stay its effect in January 2021. On February 11, 2021, this Court stayed only the part of the injunction directing Fannie Mae to remove the notices of default and election to sell from the two properties' titles.

ARGUMENT

I. Section 4617(f) Bars the Injunction, Which Interferes with the Conservator's Operation of Fannie Mae

Under Section 4617(f), "no court may take any action to restrain or affect the exercise of powers or functions of [FHFA] as a conservator." 12 U.S.C. § 4617(f). This provision "explicitly limits judicial review of claims that would hamper FHFA's conduct as a conservator." *Robinson v. FHFA*, 876 F.3d 220, 227 (6th Cir. 2017). Section 4617(f) automatically divests the district court of jurisdiction to enter any injunction that purports to constrain activities within FHFA's statutory powers to carry on Fannie Mae's business and preserve and conserve its assets. Congress expressly provided that, as Conservator, FHFA possesses "all rights, titles, powers, and privileges of [Fannie Mae]." 12 U.S.C. § 4617(b)(2)(A). Thus, the Conservator was given broad authority to, among other things, "collect all obligations and money due" Fannie Mae, and take any action "appropriate to carry on the business of [Fannie Mae]." *Id*. §§ 4617(b)(2)(B)(ii), 4617(b)(2)(D); *see also supra* at 2 (identifying other powers of the Conservator).

The fact that injunctive relief that attempts to constrain these powers is barred by Section 4617(f) is evident not just from HERA's plain text, but also from persuasive and analogous case law.

A. Courts Apply Section 4617(f) to Bar Injunctions Against Enterprise Operations

Courts have held that Section 4617(f) bars injunctive relief against the Enterprises' business operations while under conservatorship. For example, several federal appellate courts have held that courts cannot enjoin the Enterprises from refusing to purchase a certain category of mortgages in accordance with FHFA's instruction. *See, e.g.*, *Cty. of Sonoma v. FHFA*, 710 F.3d 987, 992-93 (9th Cir. 2013); *Leon Cty., Fla. v. FHFA*, 700 F.3d 1273, 1276 (11th Cir. 2012). The Ninth Circuit held that "FHFA carries on th[e] business [of the Enterprises] when it weighs the relative risks and benefits of purchasing classes of mortgages for investment." *Sonoma Cty.*, 710 F.3d at 993. Accordingly, a district court could not enjoin "[a] decision not to buy assets that FHFA deems risky [because it] is within its conservator power to 'carry on' the Enterprises' business and to 'preserve and conserve the assets and property of the [Enterprises].'" *Id.* (citing 12 U.S.C. § 4617(b)(2)(D)(ii)). Similarly, the Eleventh Circuit affirmed dismissal of a complaint seeking injunctive relief "to prohibit the implementation of Fannie Mae and Freddie Mac's announced restriction" on purchasing certain mortgages because Section 4617(f) barred such relief. *Leon Cty.*, 700 F.3d at 1276.

Section 4617(f) also bars requests to enjoin or mandate activities of the Enterprises in conservatorship that concern individual properties. For example, a court determined that HERA barred equitable relief sought "in the form of an order directing Freddie Mac to sell" a particular foreclosed property to a particular lender under state law. *Suero v. Freddie Mac*, 123 F. Supp. 3d 162, 170 (D. Mass. 2015).

In a related case, the court held that "the application of [Section 4617(f)] is not limited to instances in which the FHFA issues formal directives. Rather, by its own terms, it extends to any 'exercise of powers or functions of [FHFA] as a conservator.'" *Massachusetts v. FHFA*, 54 F. Supp. 3d 94, 99 (D. Mass. 2014) (quoting 12 U.S.C. § 4617(f)). In that case, too, the court held that it could not enjoin the restrictions Freddie Mac and Fannie Mae had announced concerning property sales because those activities were part of the Conservator's exercise of its powers to operate the Enterprises and preserve and conserve their assets. *Id.*

Here, likewise, the district court ordered injunctive relief that would both prohibit and mandate certain actions by Fannie Mae and all the "Enjoined Parties"—including FHFA—as they relate to not only Defendants' two properties and two loans, but also to all properties and loans of all Westland entities unrelated to the underlying action. Like the business practices at issue in *County of Sonoma*, *Suero*, and other cases, these are operations carried out by FHFA as conservator, statutorily protected from the injunction entered by the district court.

B. The Analogous FDIC Statute Prevents Injunctions Against Actions of Entities Under Its Conservatorship or Receivership

This Court should be guided also by cases applying the Federal Deposit Insurance Corporation's ("FDIC") similar anti-injunction statute, 12 U.S.C. § 1821(j), a provision of Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA").[2] *See, e.g. Robinson v. FHFA*, 876 F.3d

[2] "[N]o court may take any action, except at the request of the Board of Directors by regulation or order, to restrain or affect the exercise of powers or functions of the Corporation as a conservator or a receiver." 12 U.S.C. § 1821(j).

220, 227 (6th Cir. 2017) (holding that FDIC's statute is "nearly identical" to Section 4617(f) and "bar[s] claims for declaratory, injunctive, and other equitable relief against an agency acting within its statutory authority as conservator."); *Esther Sadowsky Testamentary Tr. v. Syron*, 639 F. Supp. 2d 347, 350-51 (S.D.N.Y. 2009) (holding that Section 4617(f) is an "anti-injunction clause" similar to FDIC's statute, which "has been found by several courts to constitute 'a sweeping ouster of courts' power to grant equitable remedies.").

Courts interpreting FDIC's statute have applied it to bar relief in cases where parties have sought to enjoin the actions of entities under FDIC's conservatorships and receiverships. For example, relying on its anti-injunction statute, FDIC successfully intervened and sought an emergency appeal to dissolve a preliminary injunction Bank of America had secured against Colonial Bank concerning certain loans in *Bank of Am. Nat. Ass'n v. Colonial Bank*, 604 F.3d 1239 (11th Cir. 2010). The court held that "controlling and disposing of the loans and loan proceeds … fall squarely within the powers and functions granted to the FDIC by Congress." *Id.* at 1243. Accordingly, the court vacated the order enjoining the Colonial Bank from "selling, pledging, assigning, liquidating, encumbering, transferring, or otherwise disposing of all or any portion of the loans and loan proceeds," reasoning that it would "restrain or affect" the powers of FDIC. *Id.* at 1244.

FDIC's anti-injunction statute bars injunctions that would otherwise stop or mandate the kinds of activities addressed by the injunction here. As one court reasoned in rejecting a proposed injunction to stop a foreclosure:

> FDIC succeeds to the rights of the Bank under [FIRREA].

> Therefore, the FDIC has whatever power the Bank would have had regarding [plaintiff's] promissory notes. Thus, because [plaintiff] has defaulted, the FDIC has the power to take action against [plaintiff] on the basis of the notes, and enjoining the FDIC from doing so would violate section 1821(j) by restraining the FDIC in the exercise of such power.

Vegas Diamond Props., LLC v. La Jolla Bank, FSB, No. 10-cv-1205-WQH-BGS, 2010 WL 4606461, at *5-6 (S.D. Cal. Oct. 29, 2010); *see also Zarate v. Amtrust Bank*, No. 2:13-CV-0659 KJM, 2013 WL 5934316, at *4 (E.D. Cal. Nov. 1, 2013) (Section 1821(j) barred an injunction concerning foreclosure activity). The statute also prevents injunctions mandating that an institution provide financing. *See, e.g.*, *Barrows v. Resol. Tr. Corp.*, 39 F.3d 1166 (1st Cir. 1994) (court lacked jurisdiction to enforce settlement agreement under which institution agreed to extend loan).

Moreover, courts routinely bar claims for injunctive relief concerning the activities of a financial institution under conservatorship protection, even when they nominally sought to enjoin only the institution itself, because the anti-injunction statute "deprives the court of jurisdiction to enter orders against third parties 'where the result is such that the relief restrain[s] or affect[s] the exercise of powers or functions of the [FDIC] as a conservator or a receiver.'" *New Century Bank v. Open Sols., Inc.*, No. CIV.A. 10-6537, 2011 WL 3497279, at *4 (E.D. Pa. Aug. 8, 2011) (internal citations omitted); *see also Colonial Bank*, 604 F.3d 1239; *Vegas Diamond*, 2010 WL 4606461, at *5-6.

C. This Court Has Already Applied Similar Protective Provisions of HERA to the Enterprises

This Court should be guided also by its own precedent acknowledging that HERA "empowers the FHFA to 'take such action' as it deems necessary to carry

on the business of [the Enterprises]. The phrase 'such action' is broad." *Nationstar Mortg., LLC v. SFR Invs. Pool 1, LLC*, 133 Nev. 247, 250 (2017). In addition, the Court has repeatedly acknowledged that FHFA's conservator powers include operation of the Enterprises. *E.g.*, *id.*; *Saticoy Bay LLC Series 9641 Christine View v. Fannie Mae*, 134 Nev. 270, 272 (2018).

Given the extent of these powers, the Court held that during conservatorship, Enterprise assets are protected from involuntary extinguishment by the Federal Foreclosure Bar, 12 U.S.C. § 4617(j)(3), which by its terms "applies 'with respect to the [FHFA] in any case in which the [FHFA] is acting as a conservator or a receiver.'" *Christine View*, 134 Nev. at 272 (quoting 12 U.S.C. § 4617(j)(1)). In the same vein, the Court held that the statute of limitations provision in HERA that extends the period for "any action brought by the Agency as conservator or receiver" governs claims brought by the Enterprises concerning the Federal Foreclosure Bar. *Residential Credit Sols., Inc. v. SFR Invs. Pool 1, LLC*, 476 P.3d 436 (Nev. 2020) (holding 12 U.S.C. § 4617(b)(12) would apply if argument raised by Fannie Mae and its servicer was subject to a statute of limitations).

The same analysis applies here. The language of Section 4617(f) and the extent of FHFA's powers as acknowledged already by this Court confirm that the protection from injunctive relief encompasses the operations of Fannie Mae while in conservatorship, just as the Federal Foreclosure Bar protects Fannie Mae's assets from involuntary extinguishment while under conservatorship.

II. The Injunction Impermissibly Seeks to Restrain the Conservator

The injunction purports to constrain FHFA's conservatorship powers. As

Conservator, FHFA has the power and obligation to manage risks concerning Fannie Mae's business, and how and when to pursue lending and loss mitigation activities. Such action falls squarely within its broad statutory authority to carry on and operate Fannie Mae's business and to preserve and conserve its assets. *See* 12 U.S.C. § 4617(b)(2)(B)(i), (iv). Thus, any constraint on "persons exercising or having control over the affairs of Fannie Mae," like the injunction here, APP1508 § 1, violates Section 4617(f) on its face, and must be dissolved as void.

But the injunction would not pass muster if the "Enjoined Parties" were limited to Fannie Mae. Each provision seeks to limit the loan management operations of an entity under federal conservatorship. Because the Conservator automatically steps into the shoes of Fannie Mae, 12 U.S.C. § 4617(b)(2)(B)(i), (iii), the injunction would still violate Section 4617(f). Preventing Fannie Mae from taking the actions set forth in the injunction would constrain the Conservator's power to not just operate Fannie Mae, but also to "collect all obligations" due to Fannie Mae, "preserve and conserve" its assets, and "take any action in the best interests" of Fannie Mae. 12 U.S.C. §§ 4617(b)(2)(B)(i)-(iv), 4617(b)(2)(J)(ii); *see* APP1508-11.

CONCLUSION

For the reasons stated above, FHFA as Conservator requests that this Court dissolve the injunction and remand this case for further proceedings.

Dated this __ day of March, 2021.

Respectfully submitted,

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