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**EXPLANATION OF WHY THIS CASE IS OF PUBLIC
OR GREAT GENERAL INTEREST**

This case presents an important question of law: Whether a state appellate court may substitute its judgment for that of a federal regulatory agency and, in doing so, ignore a federal statute expressly divesting all courts, both state and federal, of jurisdiction for such review. The answer impacts several Congressional statutes enacted to assist the federal government's efforts to conserve the resources of troubled financial institutions.

Congress mandated that "no court shall have jurisdiction to affect ... or ... review" orders to cease-and-desist issued by the Federal Housing Finance Agency ("FHFA"), such as the order ("Order") prohibiting the Federal National Mortgage Association ("Fannie Mae") from paying any judgment in this case. 12 U.S.C. 4635(b). The federal statute implementing this Congressional mandate left the trial court no option but to dismiss Plaintiff's claims because any judgment would necessarily "affect" FHFA's order. Nevertheless, the Eighth District, in plain contravention of governing federal law, reviewed and rejected the FHFA's unreviewable Order and reinstated the action. If left undisturbed, this plainly erroneous ruling will have serious adverse national implications to the mandated power and responsibility of federal financial institution regulatory agencies to supervise and regulate the full spectrum of financial institutions under their oversight in the manner Congress directed. This Court should accept this appeal and reaffirm that "no court[s]," including Ohio courts, may exercise jurisdiction to second-guess orders of the FHFA, as Congress has expressly mandated.

Like other federal financial regulators, FHFA in its capacity as regulator ("the Regulator") has statutory authority to issue cease-and-desist orders to prevent its regulatees (such as Fannie Mae) from taking any action that is "unsafe and unsound" or that is in violation of a law. 12 U.S.C. 4631(a)(1). *See also* 12 U.S.C. 1818(b)(1). To prevent interference with such

orders, Congress mandated that “no court” may “affect ... or ... review” “any [cease-and-desist] order” issued by the Regulator. 12 U.S.C. 4635(b); *see also* 12 U.S.C. 1818(i)(1) (similar provisions applicable to Office of the Comptroller of the Currency (“OCC”), Federal Deposit Insurance Corporation (“FDIC”) and the Board of Governors of the Federal Reserve System (“FRB”).

Congress also authorized FHFA to place Fannie Mae into conservatorship. *See* 12 U.S.C. 4617(a)(2). Further, to preserve the assets of federal conservatorships, Congress decreed that entities in conservatorship “shall not be liable for amounts in the nature of penalties.” 12 U.S.C. 4617(j)(4). Here, having placed Fannie Mae into conservatorship, the Regulator determined under its section 4631(a) enforcement authority that Fannie Mae would violate section 4617(j)(4) if it was made to pay a judgment in this case because the only relief Plaintiff seeks is “in the nature of [a] penalt[y].” Based on that determination, the Regulator issued a cease-and-desist order directing Fannie Mae not to pay any judgment in this action. The Order prohibits Fannie Mae from making payments pursuant to “[R.C.] 5301.36 or . . . any judgment in connection with [this litigation].” Order at 5.

Under 12 U.S.C. 4635(b), “no court shall have jurisdiction to affect ... or ... review” the Order. Accordingly, the trial court dismissed this action for lack of subject matter jurisdiction (Appendix A). But the Eighth District Court of Appeals, in direct contravention of the federal statutory bar against the exercise of jurisdiction over Plaintiff’s complaint, rejected the Order and substituted its judgment for that of the Regulator’s determination and proceeded to reverse the trial court’s order of dismissal (Appendix B). The Eighth District’s ruling cannot be reconciled with controlling federal statutes and case law.

The Eighth District panel's ruling, if permitted to stand, invites judicial interference into the affairs of troubled financial institutions regulated by FHFA, the FDIC, FRB and the OCC—despite Congress's express prohibition against such interference. The ruling of the Eighth District panel would destroy the longstanding structure Congress devised to resolve troubled financial institutions and remediate financial crises efficiently. This Court should accept jurisdiction and reverse.

STATEMENT OF THE CASE AND FACTS

Plaintiff-Appellee Rebekah Radatz, on behalf of herself and all others similarly situated, alleges that Fannie Mae violated R.C. 5301.36 by failing to record mortgage satisfactions within the required 90 days.¹ Radatz seeks to recover statutory sums of \$250 per violation. By statute, such an award would “not preclude or affect any other legal remedies that may be available to the mortgagor[s],” *i.e.*, it would not offset any otherwise-recoverable actual damages. R.C. 5301.36(C).

In July 2008, Congress enacted the Housing and Economic Recovery Act of 2008, Pub L. No. 110-289, 122 Stat. 2654, codified at 12 U.S.C. 4617 (“HERA”). HERA created FHFA as the regulator of Fannie Mae and Freddie Mac and also authorized FHFA to place Fannie Mae and Freddie Mac into conservatorships if necessary.² *See* 12 U.S.C. 4511(b)(2); 4617(a)(1). On September 6, 2008, pursuant to HERA, FHFA's Director placed Fannie Mae and Freddie Mac into FHFA conservatorships “for the purpose of reorganizing, rehabilitating or winding up the[ir]

¹ The class is defined as: “All persons who, since May 9, 1997 and thereafter, paid off residential mortgages recorded in Ohio, where Federal National Mortgage Association was the mortgagee at the time of mortgage satisfaction, and where the mortgage satisfaction was not recorded within 90 days.” The time period for which Radatz and the class seek relief is May 9, 1997 “to the present.”

² Through HERA, Congress transitioned regulatory oversight of Fannie Mae and Freddie Mac from the Office of Federal Housing Enterprise Oversight to the FHFA, a newly organized successor agency.

affairs.” 12 U.S.C. 4617(a)(2). During conservatorship, FHFA acts both as Regulator and Conservator of Fannie Mae and Freddie Mac. HERA provides that the Conservator “*shall not be liable for any amounts in the nature of penalties.*” *Id.* 4617(j)(1), (4) (emphasis added). This Statutory Penalty Bar applies to Fannie Mae and Freddie Mac while under FHFA’s conservatorship. *See, e.g., Nevada v. Countrywide Home Loans Servicing, LP*, 812 F. Supp. 2d 1211, 1218 (D. Nev. 2011) (holding that, pursuant to section 4617(j)(4), “while under the conservatorship with the FHFA, Fannie Mae is statutorily exempt from taxes, penalties, and fines to the same extent that the FHFA is.”).

Congress empowered FHFA, in its regulatory capacity, to issue cease-and-desist orders prohibiting Fannie Mae and Freddie Mac from taking any action that is “unsafe and unsound” or that is in violation of any law. *See* 12 U.S.C. 4631(a)(1) (providing that the Regulator may issue a cease-and-desist order if “the Director has reasonable cause to believe [Fannie Mae or Freddie Mac] is about to violate, a law, rule, regulation, or order”). Following the issuance by the Regulator of such an order, no federal or state court “shall have jurisdiction to affect ... or ... review” it. *Id.* 4635(b).³

During the pendency of this action, the Regulator issued an order under section 4631, prohibiting Fannie Mae and Freddie Mac from violating the Statutory Penalty Bar by paying “for any reason, directly or indirectly, any fines or penalties imposed by any state mortgage satisfaction law.” Order at 5. The Order specifically determines that the statutory sums sought by Ms. Radatz and the class were “in the nature of penalties” within the meaning of the Statutory Penalty Bar, and thus prohibits Fannie Mae from “paying, for any reason, directly or indirectly, any amount pursuant to any judgment” in this case. *Id.*

³ Other than as authorized by 12 U.S.C. 4634, no court may review an FHFA order issued pursuant to section 4631.

Four days after the Order was issued, Fannie Mae moved to dismiss the Complaint, on the grounds that “no court,” including the trial court, could exercise jurisdiction over this case, since entry of any judgment in favor of Plaintiff would necessarily cause the trial court to “review, modify, suspend, terminate, or set aside” the Order in contravention of 12 U.S.C. 4635(b). The trial court agreed and dismissed the Complaint for lack of subject-matter jurisdiction pursuant to Ohio Civil Rule 12(H)(3). Plaintiff appealed to the Eighth District.

The Eighth District reversed. In direct contravention of governing federal law, that Court undertook its own independent review of the Order. Misconstruing the terms of the Order, the court concluded that: (1) nothing in 12 U.S.C. 4617 (an inapplicable provision of HERA) precludes courts from reviewing the validity of the Order; (2) the Order precludes Fannie Mae from paying a judgment in this case *only insofar as* an award constituted a penalty under the Statutory Penalty Bar, rather than deferring to the Regulator’s Order precluding Fannie Mae from paying any judgment because any such judgment *would* constitute a penalty; and (3) a judgment in this case pursuant to R.C. 5301.36(C) would not be a penalty. *See Radatz v. Fed. Nat’l Mortg. Ass’n*, 8th Dist. Cuyahoga No. 100205, 2014 WL 2168153, at ¶¶ 9-19 (May 2, 2014).

ARGUMENT IN SUPPORT OF PROPOSITIONS OF LAW

Proposition of Law I: Under the controlling statutory framework established by Congress, 12 U.S.C. 4635(b), no Ohio court has jurisdiction to review a cease-and-desist order issued by the Federal Housing Financial Agency as Regulator.

1. The Relevant Statutory Scheme

Congress could not have enacted legislation that more clearly stated its intention to withdraw from all courts, state and federal, jurisdiction to review Regulator enforcement orders, 12 U.S.C. 4635(b): “[N]o court shall have jurisdiction to affect, by injunction or otherwise, the issuance or enforcement of any notice or order” issued by FHFA pursuant to 12 U.S.C. 4631(a),

nor may any court “review, modify, suspend, terminate or set aside any such . . . order.” 12 U.S.C. 4635(b). Pursuant to its authority under 12 U.S.C. 4631(a), the Regulator issued such an order after determining that payment by Fannie Mae, while under FHFA’s conservatorship, of any amount pursuant to R.C. 5301.36 in this case would constitute a penalty in “violat[ion]” of “a law,” 12 U.S.C. 4631(a) -- here the Statutory Penalty Bar, 12 U.S.C. 4617(j)(1), (4). Plaintiff did not, and cannot, dispute that the Order was issued by FHFA pursuant to its enforcement authority under section 4631. *See* Order at 5 (stating that the Order is issued “[p]ursuant to 12 U.S.C. § 4631”). Because the Regulator issued the Order pursuant to its cease-and-desist authority, “no court” has jurisdiction to review or affect it in any way. *See* 12 U.S.C. 4635(b).

Congress modeled the statutory jurisdictional bar at issue--Section 4635(b)--after the virtually identical jurisdictional bar that it enacted in 1966 with respect to enforcement orders issued by other federal financial regulators, such as the OCC, FRB and FDIC. *See* 12 U.S.C. 1818(i)(1) (“[N]o court shall have jurisdiction to affect by injunction or otherwise the issuance or enforcement of any notice or order under any such section, or to review, modify, suspend, terminate, or set aside any such notice or order.”). Consistent with this statutory mandate, the courts have unvaryingly enforced section 1818(i)’s ouster of jurisdiction whenever relief sought in a judicial proceeding, such as the judgment sought in this litigation, *could* affect an order and have done so without examining the merits of the underlying order. *See Board of Governors of Fed. Reserve Sys. v. MCorp Fin., Inc.*, 502 U.S. 32, 44, 112 S.Ct. 459, 116 L.Ed.2d 358 (1991) (holding that Section 1818(i) provides “clear and convincing evidence” of congressional intent to strip jurisdiction); *DeNaples v. Office of the Comptroller of Currency*, 404 F. App’x 609, 613 (3d Cir. 2010) (“Section 1818(i) imposes an expansive prohibition, stripping federal courts of jurisdiction whenever a determination *could* affect an agency decision”) (emphasis added).

2. Application of the Statutory Scheme to This Case

Because the Regulator issued the Order pursuant to its authority under 12 U.S.C. 4631, the *only* relevant question for the trial court and the Court of Appeals was whether a judgment awarding some or all of the judicial relief requested by Radatz would “affect” the Order. *See* 12 U.S.C. 4635(b). In answering this straight forward “yes or no” question, neither court was permitted to “review” the merits of the Regulator’s determinations underlying the Order. The trial court correctly answered this inquiry in the affirmative because entering judgment against Fannie Mae would necessarily force it to violate the Order, which explicitly commands Fannie Mae not to pay “*any* amount pursuant to Ohio Code 5301.06 or pursuant to *any* judgment in connection with [the Radatz litigation].” Order at 5. The trial court correctly recognized, consistent with uniform federal case law, that because all relief sought by Radatz was barred by the Order, it had no choice but to dismiss for lack of jurisdiction. *See, e.g., Rhoades v. Casey*, 196 F.3d 592, 597 (5th Cir. 1999) (“[I]f the district court had considered Casey’s defense and declared the [Office of Thrift Supervision] order void and therefore unenforceable, that decision would have been tantamount to the district court’s modifying or terminating the OTS order. This is an action which is expressly prohibited by § 1818(i).”); *Bakenie v. JPMorgan Chase Bank, N.A.*, No. SACV-12-60 JVS, 2012 WL 4125890, at *3 (C.D. Cal. Aug. 6, 2012) (“Although California Reconveyance Company, NDeX West, LLC, and Cal–Western Reconveyance Corporation are not parties to the Consent Order, the Court finds that Section 1818(i)(1) precludes jurisdiction as to Plaintiffs’ claim against them because the Consent Order expressly covers the conduct of third-party providers.”); *Law Offices La Ley Con John H. Ruiz, P.A. v. Rust Consulting Inc.*, 982 F. Supp. 2d 1307, 1312 (S.D. Fla. 2013) (holding that relief sought by non-party, such as Ms. Radatz, was barred by Section 1818(i) where it “certainly would affect the enforcement of, and modify the terms of the Consent Orders and the Amendments”);

Anderson v. Deutsche Bank Nat'l Trust Co., 2014 WL 988994, at *4 (E.D. Mich. Mar. 13, 2014) (explaining that “[a]pplicable precedent reveals a distinction between cases in which the relief sought by the plaintiff was already addressed by the Consent Order, resulting in the district court being divested of jurisdiction over the matter, and cases in which the Consent Order is silent as to the relief sought by the plaintiff, resulting the district court’s retention of jurisdiction.”). The trial court’s decision, in short, was compelled by a straight-forward application of HERA’s plain language, as confirmed by uniform federal precedent.

3. The Court of Appeals’ Misapplication of the Governing Federal Statutory Scheme

The Court of Appeals’ decision to reverse the trial court and review the merits of the Order rests on a fundamental misunderstanding of the governing federal statutory scheme. The panel incorrectly believed that *it* possessed the authority to determine whether the Regulator correctly determined, in an order issued under section 4631(a), that paying a judgment in this case would violate the Statutory Penalty Bar, when the plain text of Section 4635(b) deprives *all* courts, state and federal, of jurisdiction to interfere in any way with such orders. The Eighth District’s opinion reflects two basic errors regarding the nature of the statutory scheme and the Order itself.

First, the Court of Appeals conflated the Statutory Penalty Bar, which prohibits the imposition against Fannie Mae and Freddie Mac while in conservatorship of liability “for any amounts in the nature of penalties or fines,” with the Regulator’s statutory enforcement authority, which allows the Regulator to issue cease-and-desist orders prohibiting Fannie Mae from engaging in conduct that the Regulator determines would violate the law, including the Statutory Penalty Bar. *See Radatz*, 2014 WL 2168153, at ¶13 (“[W]e assume for the sake of this appeal that the conservator had authority to enter the consent order mimicking the immunity

language of 12 U.S.C. 4617(j)(4)"); *see also id.* ¶12 (“[T]he prohibition against assessing penalties or fines against the FHFA or Fannie Mae, however, is not grounds to divest the court of jurisdiction . . . Fannie Mae cited no authority for the proposition that the immunity from liability to pay penalties or fines is jurisdictional.”). The Court of Appeals is correct that the Statutory Penalty Bar does not divest it of jurisdiction over Plaintiff’s complaint. But this misses the central point. The jurisdictional bar of section 4635(b)—not the Statutory Penalty Bar of section 4617(j)(4)—is the operative provision that requires dismissal of this case. Once the Regulator issued the Order concluding that Fannie Mae would violate the Statutory Penalty Bar by paying any amount pursuant to R.C. 5301.36, or pursuant to any judgment issued in connection with this litigation, and thus precluded Fannie Mae from paying any judgment in this case, the jurisdictional bar of section 4635(b) divested the trial court of jurisdiction to take any action other than dismissing the case. It does not matter whether the court believes the Regulator was wrong—the whole point of the jurisdictional bar is to preclude courts from making that determination.⁴

Second, the Eighth District erroneously read the Order as prohibiting Fannie Mae from paying a judgment in this case only *to the extent that* doing so would violate the Statutory Penalty Bar, leaving the Appellate Panel to determine whether any such a judgment would, in fact, constitute a penalty under federal law. That is in an implausible reading of the Order, which expressly precluded Fannie Mae from paying any judgment in this case because such a judgment *would* violate the Statutory Penalty Bar.

In particular, the Appellate Court incorrectly reasoned:

⁴ Indeed, Congress’s manifest intent to provide the Regulator with unfettered enforcement authority over its cease-and-desist orders is evident from another provision of section 4635, which grants certain federal courts limited jurisdiction to require compliance with, but not to review, an order upon the request of the Regulator. *See* 12 U.S.C. 4635(a).

In simple terms, the consent order did not facially prohibit the trial court from entering a judgment against Fannie Mae in this case or generally imposing damages against Fannie Mae based on R.C. 5301.36(C). Instead, the order acknowledged the possibility of a judgment or imposition of damages in the pending action and expressed Congress's intent to limit Fannie Mae's liability for paying any amount in the nature of a penalty or fine pursuant to 12 U.S.C. 4617(j)(4).

Radatz, 2014 WL 2168153, at ¶11. That is not what the Order says. Rather, the Order explicitly directed Fannie Mae not to pay *any* amount for *any* reason pursuant to R.C. 5301.36(C), or pursuant to *any* judgment entered in connection with this litigation, precisely *because* the Regulator determined that any amount assessed under this state law or in connection with this litigation would be “in the nature of penalties” under federal law in violation of the Statutory Penalty Bar. The Order cannot fairly be read other than as prohibiting Fannie Mae from making any payment “pursuant to *any* judgment in connection with [this litigation],” Order at 5 (emphasis added), in light of the Regulator's determination that any judgment granting the relief sought by Plaintiff would constitute a penalty under controlling federal law. And even if there were any doubt about the Order's meaning, FHFA's amicus brief filed in this Court confirms that the Order absolutely forbids Fannie Mae from paying any judgment in this case because doing so would violate the Statutory Penalty Bar.

The Court of Appeals' error is confirmed by a factually analogous federal court decision that correctly reached the contrary result. In *American Fair Credit Association v. United Credit National Bank*, 132 F. Supp. 2d 1304, 1312 (D. Colo. 2001) (“*AFCA*”), the plaintiff asserted various contract and tort claims against a national bank. The national bank and its regulator, the OCC, subsequently entered into a consent order prohibiting the national bank from making any payments pursuant to the plaintiff's contract and as damages for the plaintiff's tort claims. In considering the effect of the consent order on the litigation, the court ruled that it was divested of subject-matter jurisdiction over the plaintiff's claims, explaining, “[i]f this case went forward as

currently pled and Plaintiff prevailed, Defendant [national bank] would be required to pay money damages included in the judgment in direct contravention of the [consent order] Because such an outcome would ‘affect . . . the . . . enforcement of an[] order’ issued by the [Office of the Comptroller of the Currency], 12 U.S.C. § 1818(i)(1), jurisdiction does not exist over those claims.” *Id.*

This case is indistinguishable from *AFCA*. FHFA’s Order expressly barred Fannie Mae from paying “any amount pursuant to [R.C.] 5301.36, or pursuant to any judgment in connection with [the *Radatz* litigation].” Order at 5. Any judgment granting the relief Plaintiff demands--that Fannie Mae be compelled to make monetary payments pursuant to R.C. 5301.36--would directly violate the Order that explicitly forbids Fannie Mae from making any such payments. Just as in *AFCA*, any judgment by the trial court granting Plaintiff’s requested relief would be in direct contravention of the Order, and would therefore unlawfully “affect” its enforcement.

Because the relief sought by Plaintiff would necessarily “affect” the Order, the Court of Appeals lacked jurisdiction to review the Order, or review any collateral issues raised by *Radatz*, such as whether the Regulator correctly determined that statutory sums levied under R.C. 5301.36 would be “in the nature of penalties” under governing federal law. *See, e.g., Rhoades*, 196 F.3d at 597 (“Casey nonetheless argues that the jurisdictional scheme of § 1818(i) is inapplicable to this case because he did not ask the district court to modify or suspend the [Office of Thrift Supervision] order, but instead presented a defense to the OTS order. . . . However, if the district court had considered Casey’s defense and declared the OTS order void and therefore unenforceable, that decision would have been tantamount to the district court’s modifying or terminating the OTS order. This is an action which is expressly prohibited by § 1818(i).”); *Rust*

Consulting Inc., 982 F. Supp. 2d at 1312 (“As the Court lacks jurisdiction over Plaintiffs’ claims, the Court does not address these additional arguments”).

Proposition of Law II: The Federal Housing Financial Agency's Order determining that R.C. 5301.36 is "in the nature of a penalty" under federal law is not inconsistent with *Rosette v. Countrywide Homes*, 105 Ohio St. 3d. 296, 2006-Ohio-1736, 825 NE.2d. 599.

For the reasons stated above, it is both unnecessary and violative of governing federal law to examine the merits of the Order. Nevertheless, even were such reviewed authorized, the legal determination upon which the Order is based is correct and the panel below is incorrect. The scope of the Statutory Penalty Bar--an immunity granted by federal law--cannot be limited by the label given to any relief authorized under state law. Under controlling Supreme Court precedent, federal law governs whether the exaction sought by Plaintiff is a penalty. See *Missouri Pac. R.R. Co. v. Ault*, 256 U.S. 554, 565, 41 S. Ct. 593, 65 L. Ed. 1087 (1921); see also *National Loan Investors L.P. v. Town of Orange*, 204 F.3d 407, 412 (2d Cir. 2000) (finding under the analogous statutory provision barring penalties against the FDIC that “[w]hether a charge constitutes a penalty for purposes of § 1825(b)(3) is a *federal question* informed by state law”) (emphasis added); *United States v. Lewis Cnty.*, 175 F.3d 671, 677 (9th Cir. 1999) (applying *Ault*, reasoning, “there is a strong federal interest in the question whether the United States should be subject to state-imposed interest, penalties and foreclosures, and we doubt that Congress intended the outcome to depend upon varying characterizations of state law”).

Despite the fact that federal law unquestionably controls the analysis, the Court of Appeals instead incorrectly relied on state law to conclude erroneously that the payments were not penalties. *Radatz*, 2014 WL 2168153, at ¶14 (citing *Rosette v. Countrywide Home Loans, Inc.*, 105 Ohio St. 3d 296, 2005-Ohio-1736, 825 N.E.2d 599). In *Rosette*, this Court held that the state legislature had not labeled the payments as a “penalty” or “forfeiture,” reflecting the

legislature's intent that the payments be treated as remedial for statute-of-limitations purposes. *Rosette*, ¶14. *Rosette* did not speak to, and indeed has no bearing on, whether, under *federal law* (*i.e.* the Statutory Penalty Bar), payments under R.C. 5301.36 are "in the nature of penalties."

The defining characteristic of a penalty under federal law is its objective to punish and deter, as opposed to compensate the wronged party for its pecuniary loss. *See Gabelli v. S.E.C.*, ___ U.S. ___, 133 S.Ct. 1216, 1223, 185 L.Ed.2d. 297 (2013) ("[T]his case involves penalties, which go beyond compensation, are intended to punish, and label defendants wrongdoers."); *Tull v. United States*, 481 U.S. 412, 422, 107 S. Ct. 1831 95 L.Ed.2d 365 (1987) (penalties are "intended to punish culpable individuals," not "to extract compensation or restore the status quo"). R.C. 5301.36 sanctions a failure to record a mortgage satisfaction and provides a statutory sum of \$250 for each violation. The assessment is not linked to *any* actual damages suffered by Plaintiff; indeed, she may bring an additional action to recover her actual damages. *See* R.C. 5301.36(C) ("If the mortgagee fails to comply with division (B) of this section, the mortgagor may recover, in a civil action, damages of two hundred fifty dollars. *This division does not preclude or affect any other legal remedies that may be available to the mortgagor.*") (emphasis added). The penal nature of the lawsuit is underscored by the fact that Plaintiff has already recovered the \$250 provided for in the statute in connection with the same mortgage satisfaction at issue here, as a result of a previous settlement with Countrywide Home Loans, Inc. and the class, by definition, makes no attempt to exclude individuals who have already received payment in a prior action against other defendants.

The Court of Appeals primarily relied on *Higgins v. BAC Home Loans Servicing, LP*, No. 12-cv-183-KKC, 2014 WL 1332825 (E.D. Ky. Mar. 31. 2014) in holding that R.C. 5301.06 does not provide for penalties or fines under federal law. *Radatz*, 2014 WL 2168153, at ¶¶16, 18.

The *Higgins* court concluded that KRS 382.365(5), Kentucky’s mortgage-assignment statute, does not impose liability in the nature of penalties or fines in violation of the Statutory Penalty Bar.⁵ While the *Higgins* court acknowledged that the Kentucky law imposes minimum liability of \$500 per violation—regardless of whether plaintiffs plead or show any actual harm—the court nevertheless concluded that the statute is not “penal” because it is “more properly viewed as a ‘liquidated damages’ provision.” *Higgins*, 2014 WL 1332825, at *5.

Fannie Mae and FHFA disagree with the holding of *Higgins*,⁶ but the decision is in any event inapposite here. *First*, the Eighth District itself “acknowledged . . . that *Higgins* is distinguishable from the current facts, in that [in *Higgins*] FHFA never issued a consent order to protect Fannie Mae as it did in” the instant case. *Radatz*, 2014 WL 2168153, at ¶13. *Second*, the Kentucky statute at issue in *Higgins* is markedly different. As *Higgins* noted: “As to the \$500 minimum . . . the [Kentucky] statute does not permit an individual to recover both this sum and an amount based on actual damages. Individuals can either recover actual damages or the \$500 minimum.” 2014 WL 1332825, at *6. In contrast, although the Ohio statute, R.C. 5301.36, provides a statutory sum of \$250 for each violation, that assessment is *not* linked to any actual damages suffered by Plaintiff; she is permitted to bring an additional action to recover her actual damages.

⁵ KRS § 382.365(5) provides, in relevant part, that: “Damages under this subsection for failure to record an assignment pursuant to KRS 382.360(3) shall not exceed three (3) times the actual damages, plus attorney’s fees and court costs, but in no event less than five hundred dollars (\$500).”

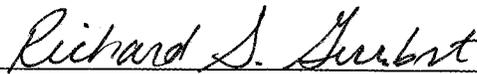
⁶ On July 3, 2014, the *Higgins* Court certified its March 31 Order for interlocutory review by the Sixth Circuit Court of Appeals under 28 U.S.C. 1292(b). *See* Doc. No. 90. Noting that it is “a difficult issue,” the Court concluded that there exists “a substantial ground for a difference of opinion” about whether the Kentucky statute provides for penalties in violation of the Statutory Penalty Bar. *Id.* at p. 6.

Accordingly, the Court of Appeals' ruling simply cannot be squared with federal law, which makes clear that exactions made pursuant to R.C. 5301.36(C) are in the nature of penalties and fines that are prohibited by the Statutory Penalty Bar.

CONCLUSION

For the reasons stated above, appellant Fannie Mae respectfully requests that the Court assume jurisdiction over this appeal for the purpose of reviewing the Eighth District Court of Appeals' reversal of the trial court's order of dismissal.

Respectfully submitted,



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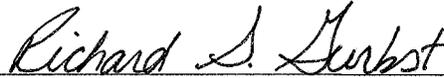
*Attorneys for Defendant-Appellant
Federal National Mortgage Association*

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Memorandum in Support of Jurisdiction was served this 7th day of July, 2014, via U.S. First Class Mail, postage prepaid, on:

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MAY 22 2014

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 100205

REBEKAH R. RADATZ

PLAINTIFF-APPELLANT

vs.

**FEDERAL NATIONAL MORTGAGE
ASSOCIATION**

DEFENDANT-APPELLEE

**JUDGMENT:
REVERSED AND REMANDED**

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CV-03-507616

BEFORE: S. Gallagher, P.J., Rocco, J., and McCormack, J.

RELEASED AND JOURNALIZED: May 22, 2014



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FILED AND JOURNALIZED
PER APP.R. 22(C)

MAY 22 2014

CUYAHOGA COUNTY CLERK
OF THE COURT OF APPEALS
By Deputy

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SEAN C. GALLAGHER, P.J.:

{¶1} Plaintiff-appellant Rebekah Radatz, individually and on behalf of the certified class members (collectively "Plaintiffs"), appeals from the trial court's decision to dismiss all claims against the defendant-appellee Federal National Mortgage Association ("Fannie Mae"), based on the claim that the trial court lacked subject matter jurisdiction. For the following reasons, we reverse the decision of the trial court and remand for further proceedings.

{¶2} In 2003, Radatz filed a complaint alleging individual and class action claims against Fannie Mae. Radatz alleged that Fannie Mae failed to comply with R.C. 5301.36(B) and file a satisfaction of a residential mortgage within 90 days from the date that she and other similarly situated mortgagors satisfied the loan debt. Radatz and the class, certified in December 2006, each sought to recover statutory damages in the amount of \$250 pursuant to R.C. 5301.36(C).

During discovery, it was determined that the class consisted of well over 100,000 individuals.

{¶3} "Fannie Mae was established in 1938 as a federal agency and was converted into a private corporation in 1968. * * * [Fannie Mae is] structured as [a] private [corporation], but [is] federally chartered and play[s] an important role in the national housing market by making it easier for home buyers to obtain loans." *Fed. Hous. Fin. Agency v. Royal Bank of Scotland Group P.L.C.*, D.Conn. No. 3:11-cv-01383, 2012 U.S. Dist. LEXIS 116292, 3-4 (Aug. 17, 2012),

quoting *Judicial Watch, Inc. v. Fed. Hous. Fin. Agency*, 646 F.3d 924, 926, (D.C.Cir.2011). In response to the housing and mortgage market crisis in July 2008, Congress passed the Housing and Economic Recovery Act of 2008 (“HERA”), creating the Federal Housing Finance Agency (“FHFA”). *Id.* Congress granted the director of the FHFA conditional authority to place regulated entities, such as Fannie Mae, into conservatorship or receivership “for the purpose of reorganizing, rehabilitating, or winding up [their] affairs.” *Id.*, quoting 12 U.S.C. 4617(a). “On September 6, 2008, the Director of the FHFA placed Fannie Mae under the FHFA’s temporary conservatorship with the objective of stabilizing the institutions so they could return to their normal business operations.” *Id.*

{¶4} Meanwhile in September 2010, and after Fannie Mae’s unsuccessful attempt to remove the action to federal court in light of HERA, Plaintiffs began compiling the list of class members. Plaintiffs completed the list — numbering over 100,000 — in February 2013 and promptly notified Fannie Mae. Seemingly in response, on March 13, 2013, Fannie Mae filed a motion to dismiss all claims, arguing that the trial court lacked jurisdiction because of a consent order issued by the FHFA director just four days earlier. It is undisputed that through the sole directive in the consent order, the FHFA director decreed that Fannie Mae was to cease and desist violating 12 U.S.C. 4617(j)(4), the so-called Penalty Bar provision that grants immunity to the FHFA from paying “any amount in the

nature of penalties and fines." Fannie Mae argued that through 12 U.S.C. 4635(b), the grant of immunity pursuant to 12 U.S.C. 4617(j)(4) became a jurisdictional concept, and therefore, the trial court lacked jurisdiction to affect any order issued by the FHFA director. In order to follow Fannie Mae's logic, it must be determined whether any damages awarded to the Plaintiffs would necessarily affect the consent order. Fannie Mae considers the statutory damages pursuant to R.C. 5301.36(C) to be in the nature of a fine or penalty. In light of Fannie Mae's argument, the trial court granted the Civ.R. 12(B)(1) motion and dismissed Plaintiffs' claims with prejudice on the basis that the trial court was divested of jurisdiction to enter a judgment in their favor against Fannie Mae.

{¶5} Plaintiffs timely appealed the trial court's decision, advancing two assignments of error. In the second assignment of error, the Plaintiffs claim the trial court erred in declining jurisdiction because the FHFA order violated the Plaintiffs' due process rights and was otherwise unenforceable. We need not address the second assignment of error. In their first assignment of error, Plaintiffs contend that neither 12 U.S.C. 4635(b) nor 4617(j)(4) divested the trial court of jurisdiction to resolve the claims, and therefore, the trial court erred by dismissing all claims against Fannie Mae. We find merit to Plaintiffs' first assignment of error. The trial court was not divested of jurisdiction. Accordingly, any claims advanced in the second assignment of error are moot.

{¶6} A trial court's decision on a Civ.R. 12(B)(1) motion to dismiss for lack of subject matter jurisdiction is reviewed under a de novo standard of review. *Rheinhold v. Reichek*, 8th Dist. Cuyahoga No. 99973, 2014-Ohio-31, citing *Bank of Am. v. Macho*, 8th Dist. Cuyahoga No. 96124, 2011-Ohio-5495, ¶ 7. The sole question for our consideration, therefore, is whether the trial court erred in holding that the FHFA consent order divested the trial court of jurisdiction over the Plaintiffs' claim for statutory damages. After reviewing the record and arguments, we must answer that question in the affirmative.

{¶7} Plaintiffs' claims against Fannie Mae are predicated on the allegation that, pursuant to R.C. 5301.36(B), Fannie Mae failed to record the satisfaction of a residential mortgage within 90 days of the mortgagor satisfying the loan. As a result, Plaintiffs seek statutory damages in the amount of \$250 per individual, injured mortgagor. R.C. 5301.36(C). Fannie Mae argues that pursuant to a federal statute, it is immune from liability for any penalties or fines provided for in the Ohio Satisfaction of Residential Mortgage Statute and because the director of the FHFA incorporated the immunity language of 12 U.S.C. 4617(j)(4) into a consent order, the trial court lacked jurisdiction to render a judgment upon the merits of Plaintiffs' statutory claim for damages. Inherent in that argument is the concept that any damages awarded pursuant to R.C. 5301.36(C) are in the nature of a penalty or fine.

{¶8} Congress granted the FHFA immunity from liability for any “amounts in the nature of penalties or fines, including those arising from the failure of any person to pay any real property, personal property, probate, or recording tax, or any recording or filing fees when due.” 12 U.S.C. 4617(j)(4). Courts have construed this grant of immunity to apply to the imposition of fees or penalties against Fannie Mae while under the direction and control of the FHFA through conservatorship or receivership.¹ *Fed. Hous. Fin. Agency v. Chicago*, 962 F.Supp.2d 1044 (N.D.Ill.2013); *Nevada v. Countrywide Home Loans Servicing, L.P.*, 812 F.Supp.2d 1211 (D.Nev.2011); *Higgins v. BAC Home Loans Servicing, L.P.*, E.D.Ky. No. 12-cv-183-KKC, 2014 U.S. Dist. LEXIS 43278 (Mar. 31, 2014). Congress, in establishing the FHFA’s authority pursuant to HERA, further prescribed that no court “shall have jurisdiction to affect, by injunction or otherwise, the issuance or enforcement of any notice or order” issued pursuant to 12 U.S.C. 4631 (cease and desist orders), or to “review, modify, suspend, terminate, or set aside any such notice or order.” 12 U.S.C. 4635(b).

¹We need not address this issue for the purposes of the current case although it was raised by Plaintiffs in the briefing, and therefore, summarily rely on the interpretation of the statute as provided by other courts from around the country. The determination of whether Fannie Mae is included in the statutory grant of immunity conferred on the FHFA does not alter the disposition of the current case. Our resolution of that issue, therefore, is unnecessary for the purposes of this appeal.

{¶9} Before addressing the application of the federal statutes to the current facts, it is important to understand the extent of the FHFA consent order. On March 9, 2013, the acting director of the FHFA issued a consent order stating as follows:

Pursuant to 12 U.S.C. § 4631 [(cease and desist proceedings)], [Fannie Mae] and Federal Home Loan Mortgage Corporation ("Freddie Mac") (together "the Enterprises") are hereby ordered to cease and desist from violating 12 U.S.C. § 4617(j)(4) by paying, for any reason, directly or indirectly, any fines or penalties *imposed* by any state mortgage satisfaction law on the Enterprises for noncompliance. Furthermore, Fannie Mae is ordered to cease and desist from violation 12 U.S.C. § 4617(j)(4) by paying, for any reason, directly or indirectly, *any amount* pursuant to Ohio Code 5301.36 or *pursuant to any judgment* in connection with the pending lawsuit styled Radatz v. Fed. Nat'l Mortgage Ass'n, Case No. CV-03-507616 (Ohio Com. Pleas).

(Emphasis added.) There are two important facets of the FHFA's consent order.

First, as emphasized in the quoted language, the order states that Fannie Mae is prohibited from paying "any amount" pursuant to R.C. 5301.36(C) based on

12 U.S.C. 4617(j)(4). "It is well settled that 'the starting point for interpreting a statute is the language of the statute itself.'" *Oakland v. Fed. Hous. Fin. Agency*, 716 F.3d 935, 939-940 (6th Cir.2013), quoting *Gwaltney of Smithfield, Ltd. v. Chesapeake Bay Found., Inc.*, 484 U.S. 49, 56, 108 S.Ct. 376, 98 L.Ed.2d 306 (1987). "[W]hen the statutory language is plain, [the court] must enforce it according to its terms." *Id.*, quoting *Jimenez v. Quarterman*, 555 U.S. 113, 118, 129 S.Ct. 681, 172 L.Ed.2d 475 (2009). "Analysis of any challenged action is

necessary to determine whether the action falls within the broad, but not infinite, conservator authority." *Sonoma v. Fed. Hous. Fin. Agency*, 710 F.3d 987, 994 (9th Cir.2013). "[I]f the FHFA were to act beyond statutory or constitutional bounds in a manner that adversely impacted the rights of others," nothing in 12 U.S.C. 4617 prevents courts from delving into the FHFA's authority to act. *In re Fed. Home Loan Mtge. Corp. Derivative Litigation*, 643 F.Supp.2d 790, 799 (E.D.Va.2009).

{¶ 10} Thus, the language in the consent order cannot be read in isolation from the statutory language empowering FHFA's and Fannie Mae's immunity. The language of the consent order must be informed by a plain reading of 12 U.S.C. 4617(j)(4), which grants the FHFA immunity, but in doing so, modifies "any amount" with the descriptive, "in the nature of penalties or fines." Accordingly, inasmuch as the consent order states that Fannie Mae is prohibited from paying "any amounts in connection" with the underlying case, the extent of the cease and desist order is limited to Congress's grant of immunity to the FHFA and Fannie Mae, immunizing Fannie Mae from paying "any amounts" in the nature of penalties or fines in connection with the underlying case. Fannie Mae has cited no authority establishing the basis of the FHFA's authority to infinitely immunize Fannie Mae from paying any amounts stemming from any actions.

{¶11} Second, and more important, the consent order directly acknowledges the trial court's ability to grant a judgment in favor of Plaintiffs and against Fannie Mae based on a violation of Ohio's mortgage satisfaction law. In the consent order, the acting director of the FHFA expressly provided that Fannie Mae must cease and desist from paying any amount, subject to the modifier, in the nature of fines or penalties, pursuant to any judgment issued in the "pending" underlying case or any imposition of fines or penalties pursuant to a state's mortgage satisfaction laws. In simple terms, the consent order did not facially prohibit the trial court from entering a judgment against Fannie Mae in this case or generally imposing damages against Fannie Mae based on R.C. 5301.36(C). Instead, the order acknowledged the possibility of a judgment or imposition of damages in the pending action and expressed Congress's intent to limit Fannie Mae's liability for paying any amount in the nature of a penalty or fine pursuant to 12 U.S.C. 4617(j)(4). With this understanding, the scope of the party's arguments, as framed, is limited to whether any judgment in the trial court in the current case would affect the consent order, pursuant to 12 U.S.C. 4635(b), or whether a judgment entered would be in the nature of a penalty or fine levied against Fannie Mae, pursuant to 12 U.S.C. 4617(j)(4), the two jurisdictional bars advanced by Fannie Mae.

{¶12} In this case, the former inquiry is subsumed by the latter. The consent order merely orders Fannie Mae to cease and desist violating

12 U.S.C. 4617(j)(4). The only order that would affect the consent order would be an order forcing Fannie Mae to pay any amount in the nature of a penalty or fine stemming from this particular case. The prohibition against assessing penalties or fines against the FHFA or Fannie Mae, however, is not grounds to divest the court of jurisdiction. *See Higgins*, E.D.Ky. No. 12-cv-183-KKC, 2014 U.S. Dist. LEXIS 43278 (noting that 12 U.S.C. 4617(j)(4) prohibits the imposition of fines or penalties against Fannie Mae or the FHFA); *Chicago*, 962 F.Supp.2d 1044 (12 U.S.C. 4617(j)(4), exempts the FHFA from the imposition of fines and penalties). Neither courts in *Higgins* or *Chicago* addressed 12 U.S.C. 4617(j)(4) from a jurisdictional standpoint, and tellingly, Fannie Mae cited no authority for the proposition that the immunity from liability to pay penalties or fines is jurisdictional.

{¶ 13} We acknowledge the fact that *Higgins* is distinguishable from the current facts in that the FHFA never issued a consent order to protect Fannie Mae as it did in the underlying case. We cannot escape the conclusion that the consent order appears to merely parrot the statutory immunity in an overt attempt to create a jurisdictional issue through 12 U.S.C. 4635(b), which is not expressly provided for in the statutory scheme granting the FHFA and, in this instance, Fannie Mae, immunity from paying any amounts in the nature of penalties or fines pursuant to 12 U.S.C. 4617(j)(4). Nevertheless, this issue is not currently before this court, and we assume for the sake of this appeal that

the conservator had authority to enter the consent order mimicking the immunity language of 12 U.S.C. 4617(j)(4).

{¶ 14} In order for a judgment in the underlying case to affect the consent order, Fannie Mae must assume that the damages awarded pursuant to R.C. 5301.36(C) are in the nature of a penalty or fine. In interpreting the Ohio General Assembly's intent, the Ohio Supreme Court held, however, that

the statutory language is clear: R.C. 5301.36(C) expressly provides that a mortgagor "in a civil action" may sue for "damages." To conclude that R.C. 5301.36(C) creates a penalty, this court would have to delete the term "damages," a word used by the legislature, and insert the term "penalty" or "forfeiture," words not chosen by the legislature. Doing so would flout our responsibility to give effect to the words selected by the legislature in enacting a statute.

Rosette v. Countrywide Home Loans, Inc., 105 Ohio St.3d 296, 2005-Ohio-1736, 825 N.E.2d 599, ¶ 13. In that case, the Ohio Supreme Court faced the issue of whether to apply the one-year statute of limitations for an action upon a statute ~~for a penalty or forfeiture, or the six-year limitations period for a statutory~~ liability action. *Id.* at ¶ 11. Subsequently, the Ohio Supreme Court clarified that the compensatory damages imposed by R.C. 5301.36(C) are "more akin to stipulated or liquidated damages" rather than punitive damages that are meant to punish the wrongdoers. *Cleveland Mobile Radio Sales, Inc. v. Verizon Wireless*, 113 Ohio St.3d 394, 2007-Ohio-2203, 865 N.E.2d 1275, ¶ 13. In the latter case, the court noted the difference between damages awarded in the

nature of compensatory damages and treble "damages," which serve a punitive objective. *Id.* at ¶ 14.

{¶15} Inasmuch as federal law controls this issue of whether damages are in the nature of a penalty or fine, in order to determine whether a "particular statutory provision is penal in nature," federal courts use a three-tiered analysis: (1) whether the purpose of the damages is to redress individual or public wrongs; (2) whether the recovery runs to the individual or the public, and (3) whether the recovery is disproportionate to the harm suffered. *Asklar v. Honeywell, Inc.*, 95 F.R.D. 419, 423 (D.Conn.1982); *Higgins*, E.D.Ky. No. 12-cv-183-KKC, 2014 U.S. Dist. LEXIS 43278, at *13 (also noting that damages are commensurate with the injury received while a penalty has no reference to the actual loss sustained by the individual suing for recovery).

{¶16} On this point, the federal district court's decision in *Higgins* is instructive. In that case, Fannie Mae and the FHFA advanced the same arguments: that Fannie Mae is immune from any judgment because of the immunity from the imposition of fines or penalties afforded by 12 U.S.C. 4617(j)(4), albeit based on Kentucky's recording statute that establishes up to treble damages for any mortgagee's failure to record assignments of the mortgage. *Higgins* at *15. The *Higgins* court noted that the remedy provided by Kentucky's recording statute inured to the affected individual as a form of liquidated damages for the mortgagee's violation. *Id.* In light of that finding,

the court denied Fannie Mae and the FHFA's motion to dismiss. The federal district court could not only award damages, but those damages could be imposed against Fannie Mae and the FHFA because the damages were outside the scope of their statutory immunity. *Id.*

{¶17} In an attempt to deem Ohio's interpretation of its own statutory award of damages in conflict with the federal court's separate analysis used to determine whether an award is penal or compensatory, Fannie Mae cites *Bowles v. Farmers Natl. Bank of Lebanon, Kentucky*, 147 F.2d 425, 428 (6th Cir.1945), and *Schaefer v. H.B. Green Transp. Line, Inc.*, 232 F.2d 415, 418 (7th Cir.1956). Neither case supports Fannie Mae's position. *Bowles* is consistent with *Higgins*. The statute at issue in *Bowles* provided that the damages for any violations were to be recovered by the government, which converts damages into those in the nature of a penalty. *Bowles* at 428. On the other hand, *Schaefer* is simply inapplicable. In that case, the plaintiff shareholder impermissibly attempted to enforce an Illinois statutory provision against an Iowa corporation because no Iowa statute penalized the conduct that an Illinois statute penalized. *Schaefer* at 416. The facts and issues in *Schaefer* simply have no relevance to the facts or issues advanced in the current case. Fannie Mae offered no other analysis or evidence to demonstrate that any damages awarded pursuant to R.C. 5301.36(C) are in the nature of a penalty or a fine.

{¶18} The factual underpinnings of the current case are sufficiently similar to those addressed in *Higgins*, E.D.Ky. No. 12-cv-183-KKC, 2014 U.S. Dist. LEXIS 43278. Not only has the Ohio Supreme Court referred to the damages awarded pursuant to R.C. 5301.36(C) as liquidated, and thus compensatory damages, but the damages inure to the benefit of the individuals aggrieved by Fannie Mae's failure to timely file the satisfaction of judgment as mandated by Ohio law. *See also Asklar*, 95 F.R.D. at 423. More important, unlike the statute at issue in *Higgins*, which awarded treble damages and yet was deemed compensatory in nature, R.C. 5301.36(C) does not award treble or other presumptively punitive damages.

{¶19} As a result, the result is the same either under Ohio's interpretation of its own statute or the federal analysis. R.C. 5301.36(C) awards compensatory damages. Those damages are not in the nature of a penalty or fine. Therefore, any judgment awarded by the lower court would not violate any immunity conferred by 12 U.S.C. 4617(j)(4). Any judgment or imposition of damages pursuant to R.C. 5301.36(C) is not in the nature of a penalty or fine. Therefore, the trial court erred by relying on the statutory immunity as grounds to dismiss Plaintiffs' complaint.

{¶20} Finally, in light of the determination that any judgment awarded in the lower court would not affect the immunity conferred by 12 U.S.C. 4617(j)(4), the court did not lack jurisdiction to dispose of the merits of the class

action complaint. Pursuant to 12 U.S.C. 4635(b), the trial court was divested of jurisdiction to issue any order that affected the FHFA consent order. Because any damages awarded through a judgment in the lower court action are not in the nature of a penalty or fine, the court had jurisdiction to dispose of the merits of all claims and to award damages to Plaintiffs based on Fannie Mae's alleged violation of R.C. 5301.36(C). Further, the FHFA consent order itself contemplated a judgment. It must logically follow that the trial court was not divested of jurisdiction. Any judgment in the underlying case could not possibly affect a consent order that specifically contemplated such a judgment being imposed in the first place.

{¶ 21} Plaintiffs in this case do not otherwise seek relief expressly banned by the FHFA consent order, or an injunction to prevent its enforcement, or declaratory relief to have the consent order declared invalid. *See Rex v. Chase Home Fin. L.L.C.*, 905 F.Supp.2d 1111 (C.D.Cal.2012) (deciding that based on a similar federal statutory scheme, the trial court possessed jurisdiction because the defendants did not provide the legal authority or evidence to show that the relief in the complaint actually affected a consent order). Plaintiffs merely seek the resolution of the merits of the class action claims that have been pending for more than a decade. Resolution of those claims will not affect or otherwise impede application of the consent order, and therefore, the trial court was not divested of jurisdiction in the underlying case.

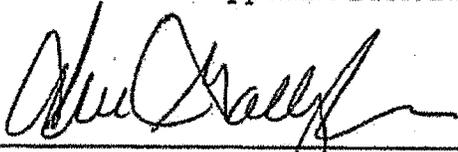
{¶22} For the foregoing reasons, we reverse the decision of the trial court dismissing all claims based on the lack of subject matter jurisdiction and we remand the case for further proceedings consistent herein.

It is ordered that appellant recover from appellee costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.



SEAN C. GALLAGHER, PRESIDING JUDGE

KENNETH A. ROCCO, J., and
TIM McCORMACK, J., CONCUR

The State of Ohio, }
Cuyahoga County. } ss.

L. ANDREA F. ROCCO, Clerk of the Court of

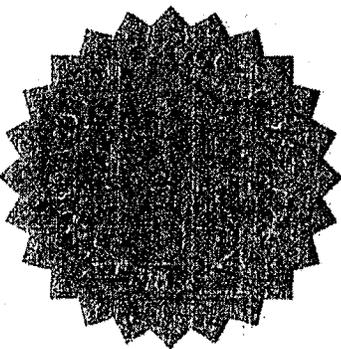
Appeals within and for said County, and in whose custody the files, Journals and records of said Court are required by the laws of the State of Ohio to be kept, hereby certify that the foregoing is taken and copied from the Journal entry dated on 5/22/14 CA 100205

of the proceedings of the Court of Appeals within and for said Cuyahoga County, and that the said foregoing copy has been compared by me with the original entry on said Journal entry dated on 5/22/14 CA 100205 and that the same is correct transcript thereof.

In Testimony Whereof, I do hereunto subscribe my name officially, and affix the seal of said court, at the Court House in the City of Cleveland, in said County, this 22 day of May A.D. 20 14

ANDREA F. ROCCO, Clerk of Courts

By [Signature] Deputy Clerk





80105345

**IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO**



REBEKAH R. RADATZ
Plaintiff

Case No: CV-03-507616

Judge: NANCY A FUERST

FEDERAL NATIONAL MORTGAGE ASSOCIATION
Defendant

JOURNAL ENTRY

89 DIS. W/ PREJ - FINAL

THIS MATTER IS BEFORE THE COURT ON DEFENDANT FEDERAL NATIONAL MORTGAGE ASSOCIATION'S 03/13/13 MOTION TO DISMISS PURSUANT TO OHIO R. CIV. P. 12(H)(3) FOR LACK OF SUBJECT MATTER JURISDICTION OVER PLAINTIFF'S CLAIMS.

PURSUANT TO THE FEDERAL HOUSING FINANCE AGENCY ("FHFA") CONSENT ORDER AGAINST DEFENDANT FEDERAL NATIONAL MORTGAGE ASSOCIATION ENTERED ON 03/09/13, AND 12 U.S.C § 4635(B), WHICH STATES, "NO COURT SHALL HAVE JURISDICTION TO AFFECT [EFFECT], BY INJUNCTION OR OTHERWISE, THE ISSUANCE OR ENFORCEMENT OF ANY NOTICE OR ORDER UNDER SECTION [...] OR TO REVIEW, MODIFY, SUSPEND, TERMINATE, OR SET ASIDE ANY SUCH NOTICE OR ORDER," THIS COURT FINDS THAT IT IS DIVESTED OF JURISDICTION OVER THIS MATTER.

ACCORDINGLY, DEFENDANT FEDERAL NATIONAL MORTGAGE ASSOCIATION'S 03/13/13 MOTION TO DISMISS IS GRANTED. THERE IS NO JUST CAUSE FOR DELAY.

COURT COST ASSESSED TO THE PLAINTIFF(S).

N. Fuerst 7/8/13
Judge Signature Date

RECEIVED FOR FILING

JUL 08 2013

CUYAHOGA COUNTY
CLERK OF COURTS
By [Signature] Deputy