ORIGINAL

IN THE SUPREME COURT OF OHIO

REBEKAH R. RADATZ, individually and on behalf of all others similarly situated, Plaintiff-Appellee, vs. FEDERAL NATIONAL MORTGAGE ASSOCIATION, Defendant-Appellant.	:	Case No. 2014-1126 On Appeal from the Cuyahoga County Court of Appeals, Eighth Appellate District Case No. CA-13-100205 Cuyahoga County Court of Common Pleas Case No. CV-03-507616

PLAINTIFF-APPELLEE'S MEMORANDUM OPPOSING JURISDICTION

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PLAINTIFF-APPELLEE'S MEMORANDUM OPPOSING JURISDICTION

I. Introduction.

Contrary to the implication of the memorandum of the Federal National Mortgage Association ("Fannie Mae"), no federal agency or federal court issued any order to the trial court in this case. Instead, Fannie Mae entered into a consent order with its regulator, the Federal Housing Finance Agency ("FHFA"). No findings of fact or law were made by FHFA before issuing the consent order. And, as the Eighth District noted, "[i]t 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 FHFA from paying 'any amount in the nature of penalties and fines.'" (Emphasis added.) *Radatz v. Fed. Nat' Mortgage Ass'n*, 8th Dist. No. 100205, 2014-Ohio-2179, ¶ 4. Under both Ohio and federal law, the statutory damages sought by Radatz are not penalties or fines. Therefore, the consent order has not been "affected" under 12 U.S.C. 4635 by proceeding in this case.

Fannie Mae's counsel moved to dismiss this matter on the basis that the FHFA consent order prohibited it from paying fines or penalties. According to Fannie Mae, neither the trial court nor the Eighth District should have actually looked beyond Fannie Mae's motion to dismiss to the language of the consent order itself to see if a judgment in this case would cause Fannie Mae to violate the consent order. Federal law is otherwise. A court confronted with an agency consent order reviews the order carefully to determine if proceeding would affect the order. *Rex v. Chase Home Finance LLC*, 905 F. Supp. 2d 1111 (C.D. Cal. 2012); *In re JPMorgan Chase Mortgage Modificiation Litig.*, 880 F. Supp. 2d 220 (D. Mass. 2012).

Because the sole directive of the consent order is that Fannie Mae not pay any amounts in the nature of fines or penalties, the Eighth District looked to both Ohio and federal law to determine if the Plaintiff's claim subjected Fannie Mae to any fines or penalties. In doing so, the Eighth District did not ignore any "findings," because FHFA didn't make any findings. The stipulation to the consent order expressly states: "Fannie Mae and Freddie Mac, in the interests of compliance and cooperation, consent to the issuance of a consent order dated March 6, 2013 ("Order"), before the filing of any notice and **before the finding of any issues of fact or law**[.]" (Emphasis added.) Without any findings on whether a payment in this case would violate § 4617, it was incumbent upon the courts to review that provision. Both state and federal law are clear that a judgment in Radatz's favor would not cause Fannie Mae to pay any penalties or fines.

Radatz seeks to recover only statutory damages in the amount of $250 under R.C. 5301.36(C). *Radatz*, 2014-Ohio-2179, ¶ 2. This Court has addressed whether statutory damages under R.C. 5301.36(C) are a penalty, holding they are not: 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,' ... and insert the term 'penalty[.]' 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, ¶ 13. Thus, under Ohio state law, the consent order's prohibition on Fannie Mae paying penalties doesn't apply to Radatz's claim.

The Eighth District also examined federal law, which Fannie Mae insists controls. The result is the same under federal law. In *Higgins v. BAC Home Loans Servicing, LP*, No. 12-cv-183-KCC, 2014 U.S. Dist. LEXIS 43278 (E.D. Ky. Mar. 31, 2014), the federal district court addressed the issue of whether statutory damages for violation of a state mortgage release statute constitute a penalty. The relevant Kentucky statute was even more stringent than Ohio's. It mandated payment of twice the amount of Ohio ($500 not $250) plus three times actual damages (Ohio's statute only allows for a single recovery of actual damages). *Higgins*, 2014 U.S. Dist. LEXIS 43278, at *4 (the Kentucky statute states that damages are not to "'exceed three (3) times the actual damages, plus attorney's fee and court cost, but in no event less than five hundred dollars ($500).'"). Fannie Mae was also the defendant in *Higgins*. As it did in this case, Fannie Mae demanded in *Higgins* that the district court dismiss the action, arguing that statutory damages were a penalty under 12 U.S.C. 4617. *Id.* at *3. The district court rejected Fannie Mae's argument, holding that "instead of a penalty, the provision is more properly viewed as a 'liquidated damages' provision recognizing the difficulty of quantifying the costs and expenses incurred by an individual whose mortgage is assigned without his knowledge." *Id.* at *16. The court noted that the damages were paid to the individual and not the government. The district court concluded that "[b]ecause the damages for failing to record a mortgage assignment provided for in the Kentucky recording statutes are not properly characterized as a fine or penalty, 12 U.S.C. § 4617(j)(4) does not prohibit them from being assessed against the Agency or Fannie Mae." *Id.*

The *Higgins* decision is not an outlier. In *Porter v. Household Finance Corp.*, 365 F. Supp. 336 (S.D. Ohio 1974), the district court held that the liquidated damages provision of the Truth-in-Lending Act was not a penalty: "a liability is not penal merely because greater than 'actual' damages are imposed. The true test is whether the wrong to be remedied or punished is primarily to an individual or to the State." *Id.* at 341. Because the "cause of action accrue[d] to the person injured in his property interest, not to a third person or the State", the liquidated damages provision was not in the nature of a penalty. *Id.* at 342-43. The Sixth Circuit subsequently reviewed *Porter* and agreed with its analysis: "the Supreme Court, this court, and the courts of numerous other circuits have held a number of statutory schemes authorizing multiple recoveries and minimum recoveries greater than actual damages to be remedial and not to impose penalties where the wrong addressed by the statute is primarily a wrong to the individual." *Murphy v. Household Finance Corp.*, 560 F.2d 206, 210 (6th Cir. 1977). Here, it is undisputed that the wrong is to the individual, not the government. Therefore, under federal law, the statutory damages in this case are not a penalty.

Fannie Mae cites no Ohio or federal law in support of its position that statutory damages under R.C. 5301.36(C) constitute a "penalty." That's because there is none. Instead, Fannie Mae's entire argument is that when Fannie Mae enters into a consent order with its regulator, FHFA, the sole arbiter of the significance of the order is Fannie Mae, and that the court should simply accept Fannie Mae's interpretation of the order without actually reviewing it. Fannie Mae adopts that untenable position because no court would conclude that the statutory damages in this case are in the nature of a penalty.

II. This Case Does Not Present an Issue of Public or Great General Interest.

This case does not present an issue of public or great general interest. FHFA ordered Fannie Mae not to violate 12 U.S.C. 4617(j)(4). As the Eighth District explained, the "consent order merely orders Fannie Mae to cease and desist from 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." *Id.* at ¶ 12. Fannie Mae argued, unsuccessfully, that a judgment in Radatz's favor would require Fannie Mae to pay a penalty. But, per this Court's decision in *Rosette*, statutory damages under R.C. 5301.36(C) are not a penalty under Ohio law. And the *Higgins* court reached the same conclusion under federal law.

The case is fact-specific to Fannie Mae about a unique consent order specific to this case, related to a federal statute that has never been involved in any case before this Court. The issue presented is limited in time to Fannie Mae's temporary conservatorship which is near its end. (Fannie Mae is a privately-owned, publicly-traded corporation[1] that had a net income of $84 billion in 2013[2] and is ready to exit conservatorship.)

The issue being raised is actually advisory, since Fannie Mae admits that the "bar" it seeks could apply, if at all, only while in conservatorship. A money judgment, even for penalties, after conservatorship ends raises no issue. If a money judgment is entered while Fannie is in conservatorship, it can then appeal. The question is not ripe until that time. FNMA seeks to short-cut the judicial process and get an advisory opinion which can be moot by the time of any judgment.[3]

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[1] Fannie Mae is still a private corporation that is not part of the federal government. See *Herron v. Fannie Mae*, 857 F. Supp. 2d 87, 95–96 (D.D.C. 2012) ("the government has not acceded to permanent control over the entity and Fannie Mae remains a private corporation"; "Fannie Mae was not converted into a government entity when it was placed into conservatorship").

[2] "We recognized comprehensive income of $84.8 billion in 2013, consisting of net income of $84.0 billion and other comprehensive income of $819 million." http://www.fanniemae.com/resources/file/ir/pdf/quarterly-annual-results/2013/10k_2013.pdf , at p. 3.

[3] Fannie Mae argued to other courts that its conservatorship will be ending. In *Dias v. Federal National Mortgage Association*, No. 12-00394 DKW KSC, 2013 U.S. Dist. LEXIS 181584 (D. Haw. Dec. 31, 2013), *47, the district court agreed with FNMA, citing *Herron v. Fannie Mae*, 857 F. Supp. 2d 87, 95 (D.D.C. 2012) noting, "'FHFA's control over Fannie Mae is temporary.'"

Fannie Mae now asks this Court to reverse its own decision in *Rosette* and reject the recent federal court decision in *Higgins*. But it has offered no reason for this Court to do under either state or federal law. Instead, Fannie Mae's argument boils down to a disagreement with the Eighth District, and a disagreement with *Higgins*: "Fannie Mae and FHFA disagree with *Higgins*" on which the Court of Appeals relied. Fannie Mae Memo, p. 14. Aside from the fact that alleged "error correction" is not grounds for jurisdiction, more important is the fact that these matters will never be repeated and so lack any public or great general interest.

III. Statement of the Case.

Radatz filed her class action complaint on August 7, 2003, alleging that Fannie Mae failed to timely record her mortgage satisfaction, and seeking statutory damages of $250 under R.C. 5301.36(C). Contrary to Fannie Mae's statement, Radatz did not previously receive $250 payment on this claim in another lawsuit. Fannie Mae Memo, p. 13. (Indeed, the trial court rejected that identical argument made by Fannie Mae in an effort to forestall mailing notice to the class members). On November 1, 2006, the trial court granted class certification. In a September 14, 2010 journal entry, the trial court ordered the parties to search public records to identify the class members. (The extensive time gaps between 2003 and 2010 are due to Fannie Mae unsuccessfully twice removing this case to federal court.) In late February 2013, Radatz' counsel completed the task of identifying the class members (a process in which Fannie Mae refused to participate) and notified Fannie Mae that over 100,000 late class members had been identified. Fannie Mae responded by racing to secretly contact its conservator and, without notice, hearing, or findings, obtaining a "consent order" from FHFA on March 6, 2013. A week later, citing the consent order, Fannie Mae filed a motion to dismiss. The trial court granted Fannie Mae's motion on July 8, 2013.

As Fannie Mae observes, the Housing and Economic Recovery Act of 2008 ("HERA") was enacted in July 2008. Fannie Mae Memo, p. 3. The statute on which the consent order is premised, 12 U.S.C. 4617(j)(4), is part of that law. Thus, at any time between July 2008 when § 4617(j)(4) was enacted and March 2013, Fannie Mae could have moved to dismiss this case on the basis that the damages sought by Radatz were a penalty, and Fannie Mae was barred, by federal law, from paying a penalty. But to this day, Fannie Mae has never presented that argument directly to the trial court, because it knows that the argument is meritless. Instead, Fannie Mae sought a consent order from FHFA so that it could make the argument that it is now making: a court isn't allowed to look at a FHFA consent order; instead, it must defer to Fannie Mae's claims about that order.

Although this litigation had been pending since 2003, neither Fannie Mae nor FHFA saw any need to hold a hearing on the consent order in which the Plaintiff could participate. Instead, the consent order was issued without the knowledge of the Plaintiff or any of the class members.

Fannie Mae repeatedly asserts that the "Order specifically determines that the statutory sum sought by Ms. Radatz and the class were 'in the nature of penalties'[.]" Fannie Mae Memo, p. 4. But the order indicates expressly that it made no findings of fact or law:

> **WHEREAS,** Fannie Mae and Freddie Mac, in the interests of compliance and cooperation, consent to the issuance of a consent order dated March 6, 2013 ("Order"), before the filing of any notice and before the finding of any issues of fact or law;

If FHFA had made any findings, FHFA, or whoever drafted the consent order, would have stated them. It did not. The only statement regarding findings of fact and law is that none were made. Fannie Mae knows that, because it stipulated to the fact that no findings were made before the consent order was issued.

For that reason, the lynchpin of Fannie's entire argument to this court—that the court of appeals was not permitted to analyze whether payment in this case would be in the nature of a fine or penalty, because the FHFA already made that finding—is false.

IV. Proposition of Law I.

Radatz's response to Fannie Mae's Proposition: *12 U.S.C. 4635(b) does not prohibit a court from reading a consent order to determine if it applies to a matter pending before the court.*

There is no prohibition on a court reading a consent order to determine if it applies to a matter pending before the court. Under 12 U.S.C. 4635(b), no court has jurisdiction "to affect by injunction or otherwise" a FHFA consent order, or "to review, modify, suspend, terminate, or set aside such notice or order." But when a defendant appears in court waving a consent order, demanding "dismiss, dismiss, you must dismiss," the court must do something more than simply take the defendant's word as to what the consent order says.

The requirement that the court read the consent order to determine if it divests the court of subject matter jurisdiction is apparent from all of the cases dealing with consent orders under § 4635 or consent orders issued to banks under 12 U.S.C. § 1818. (The provisions of 12 U.S.C. 1818(i)(1) are identical to those of § 4635.) Contrary to Fannie Mae's argument, the body of federal law that has developed around banking consent orders makes it clear that courts *must* read consent orders to determine if the orders divest them of jurisdiction over the plaintiff's claim.

In *Rex v. Chase Home Finance LLC*, 905 F. Supp.2d 1111 (C.D. Cal. 2012), homeowners Michael and Naomi Rex obtained a written agreement from Chase to release them from the deficiency on the short sale of their home. When Chase attempted to collect the deficiency, they sued. *Id.* at 1119-20. Chase sought to have their claims dismissed based on a consent order it had entered into with the OCC.

Under the terms of the consent order, Chase had agreed to develop a plan to ensure effective coordination of communications with borrowers relating to loss mitigation, and to reimburse borrowers for impermissible expenses or other financial injury. *Id.* at 1121. Like Fannie Mae, Chase argued that the consent order divested the district court of jurisdiction over the plaintiffs' claims. *Id.* at 1124. After reading the consent order, the district court rejected Chase's argument.

The *Rex* court explained that the "non-interference" language was to prevent the *regulated party* from appealing consent orders to which it had agreed: "'The primary purpose of [§ 1818] is to prevent federal courts from usurping the OCC's power to enforce its own consent orders *against the parties to the orders*.'" (Emphasis sic.) *Id.* at 1126. Therefore "'the jurisdictional bar is not meant to displace a non-party's right to present its claims to a federal court, or the jurisdiction of the court to hear those claims.'" *Id.*

Having placed the consent order in the proper context, the district court concluded that Chase had "not provided the legal authority or evidence to show that the relief in the pending lawsuit 'affects by injunction or otherwise' or 'modifies' the 2011 Consent Order." (Brackets omitted.) *Id.* at 1129.

Similarly, in *In re JPMorgan Chase Mortgage Modificiation Litig.*, 880 F. Supp. 2d 220 (D. Mass. 2012), a damages suit was pending against Chase for improper lending practices. Chase argued that the court lacked jurisdiction because of a consent order. The district court rejected Chase's argument, and held that the OCC consent order did not preclude it from exercising jurisdiction over the plaintiff's claim: "federal courts have jurisdiction to enforce contracts, and can do so even where a party is subject to a consent order—so long as the enforcement action does not 'affect' (or upset) the underlying order." *Id.* at 232. Thus, the court read the consent order and concluded that it did not bar the plaintiffs' claims. *Id.* at 232-33.

Also, in *American Fair Credit Association v. United Credit National Bank*, 132 F. Supp.2d 1304 (D. Col. 2001), the defendants entered into a series of consent orders with the OCC. *Id.* at 1307. The district court read the consent orders and determined, in part, that the "June 29, 2000 UICI Consent Order does not prohibit Defendant UICI from making payments to Plaintiff as Defendants maintain." *Id.* at 1311. Again, the court made that determination by reading the consent order.

Here, the Eighth District read the consent order which has as its "sole directive" that Fannie Mae cease and desist from any payments violating 12 U.S.C. 4617(j)(4). It then looked to see if a judgment in favor of Radatz would violate § 4617(j)(4), and concluded that it would not. This approach is entirely consistent with the approach taken by all of the federal courts in addressing motions to dismiss claims premised on consent orders between a federal regulator and a regulated agency.

Fannie Mae doesn't cite any case that prohibited the Eighth District from reading the consent order to figure out if it applied. Instead, Fannie Mae tries unsuccessfully to rewrite the consent order. It argues that FHFA "conclud[ed] that Fannie Mae would violate the Statutory Penalty Bar by paying any amount pursuant to R.C. 5301.36." Fannie Mae Memo, p. 9. But how could FHFA have "concluded" that Fannie Mae would violate § 4617(j)(4) when Fannie Mae expressly stipulated upon entering into the consent order that FHFA had made no findings of fact or law? (FHFA barely had time to allow the ink to dry on the consent order, Fannie Mae was in such a rush to file its motion to dismiss after learning that 100,000 class members had been identified.) And nothing in the text of the consent order conflicts with Fannie Mae's stipulation that FHFA made no findings.

Also, FHFA did not prohibit Fannie Mae from paying a judgment in this case. Instead, it ordered Fannie Mae "to cease and desist from violating 12 U.S.C. § 4617(j)(4)[.]" *Radatz*, 2014-Ohio-2179, at ¶ 9. Fannie Mae could only violate § 4617(j)(4) by paying penalties or fines. So, as the Eighth District explained, 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 .... 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)." *Radatz*, 2014-Ohio-2179, at ¶ 11. Acknowledging the possibility of a judgment in this case, the consent order "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)." *Id.* Fannie Mae is bound to concede that no penalties or fines are at issue in this case, since both Ohio and federal law reach that specific holding.

Fannie Mae insists that this case is indistinguishable from *American Fair Credit*, in which the court dismissed *some* counts of the complaint based on a consent order. *American Fair Credit*, 132 F. Supp.2d at 1312. Fannie Mae is incorrect. In *American Fair Credit*, the plaintiff sought money damages from the defendant. *Id.* And, the consent order instructed the defendant to "'cease and desist all activity and transactions relating to the products of [plaintiff], including but not limited to payment of funds for any reason to [plaintiff].'" *Id.* The OCC did not qualify the consent order by premising it on a requirement that the defendant cease and desist from actions violating a statute.

Fannie Mae expressly stipulated no findings of fact or law were made before it entered into the consent order with FHFA. Now, as a matter of expediency, Fannie Mae asks this Court to exercise jurisdiction over this matter on the basis that FHFA *did* make findings. Why? Because in the absence of such findings, it's clear that the Eighth District properly concluded that allowing this case to proceed to judgment would not affect the consent order. Based on the holdings in *Rosette* and *Higgins*, the only conclusion the Eighth District could reach is that this case does not involve any penalties or fines.

Fannie Mae's first proposition of law can be reduced to the simple fact that Fannie Mae disagrees with the Eighth District's reading of the consent order, with Fannie Mae arguing that FHFA made findings of law, and the Eighth District concluding the opposite. Given Fannie Mae's stipulation that no findings of law or fact were made, the Eighth District reached the correct conclusion. Regardless, the application of a single consent order is not a matter of public or great general interest. And the issue of this specific consent order is unlikely to ever be presented to another court in Ohio. Therefore, this Court should not exercise jurisdiction over this matter.

V. Proposition of Law II.

Radatz's response to Fannie Mae's Proposition: *The statutory damages at issue in this case are* *<u>not</u>* *in the nature of a penalty or fine.*

The issue before the Eighth District was whether statutory damages under R.C. 5301.36 constitute a penalty. State law controls that determination: "When a state statute is at issue, federal courts are bound by the state courts' interpretation of the statute[.]" *Walters v. Warden*, No. 12-32-2, 2013 U.S. App. LEXIS 6761 (6th Cir. Apr. 2, 2013); *Johnson v. Fankell*, 520 U.S. 911, 916 (1997) ("[n]either [the Supreme Court] nor any other federal tribunal has any authority to place a construction on a state statute different from the one rendered by the highest court of the state"); *Federal Reserve Bank of Richmond v. City of Richmond*, 957 F.2d 134, 135 (4th Cir. 1992) ("applying state law to determine whether penalties and interest are part of a tax would not impair the federal interest"). In *Rosette*, this Court determined that the statutory damages Radatz seeks to recover in this case are not a penalty. *Rosette*, 2005-Ohio-1736, at ¶ 13. That holding should have been the beginning and the end of the trial court's analysis of Fannie Mae's motion to dismiss.

Even if the trial court chose to disregard this Court's holding in *Rosette* and look to federal law, the result is the same. In *Higgins*, the district court addressed whether statutory damages under a Kentucky recording statute constituted a penalty. *Higgins*, 2014 U.S. Dist. LEXIS 43278, at *4. The Kentucky statute provided that damages "shall not exceed three (3) times the actual damages, plus attorney's fees and court costs, but in no event less than ($500)." *Id.* The recovery allowed under the Ohio statute is only $250 in statutory damages and actual damages. R.C. 5301.36(C). Under any scenario, the Kentucky statute allows for a greater recovery. For example, if a plaintiff's actual damages were $5,000, under the Kentucky statute, the plaintiff could recover $15,000, while under the Ohio statute the plaintiff could recover only $5,250. Similarly, if a Kentucky plaintiff's actual damages were $1, he would recover $500, while an Ohio plaintiff with the same actual damages would recover $251.

Reviewing the Kentucky statute, the *Higgins* court concluded that the statutory damages were not in the nature of a penalty or fine. *Id.* at *15. In reaching that conclusion, the court cited the Sixth Circuit's decision in *Murphy v. Household Finance Corp.* for the proposition that the "fact that [a] statute allowed for recovery of more than actual damages did not necessarily make it penal 'where the wrong addressed by the statute if primarily a wrong to the individual.'" *Higgins*, 2014 U.S. Dist. LEXIS 43278, at *15, quoting *Murphy*, 560 F.2d at 210.

The cases cited by Fannie Mae, *Gabelli v. S.E.C.*, 133 S. Ct. 1216, 1223 (2013) and *Tull v United States*, 481 U.S. 412, 422 (1987), are consistent with the holdings in *Higgins* and *Murphy* that an award of statutory damages to an individual does not constitute a penalty. *Gabelli* was an SEC enforcement action for civil penalties under 15 U.S.C. § 80b-9. *Gabelli*, 133 S.Ct. at 1217. The penalties were "payable to the Treasury of the United States." 15 U.S.C. § 80b-9(e)(A). *Tull* was also a classic "penalty" case: the government sought to recover civil penalties under the Clean Water Act. *Tull*, 481 U.S. at 414. Neither case involved a recovery of statutory damages by an individual. Both cases involved the government seeking a recovery for itself.

Given the holdings in *Rosette*, *Higgins*, and *Murphy*, Fannie Mae's second proposition of law is wrong. There is no question that under both Ohio and federal law the statutory damages in this case are not in the nature of a penalty. Fannie Mae cites no conflicting authority. Instead, it cites two cases which stand for the unremarkable proposition that when the government seeks to recover a penalty from a defendant, any payment made by the defendant to the Treasury will be in the nature of a penalty.

For the foregoing reasons, Fannie Mae's second proposition of law does not present an issue of public or great general interest.

VI. Conclusion.

Fannie Mae contends that Radatz's claims should be dismissed because Fannie Mae is prohibited by federal law from paying any penalties. But Ohio and federal law are clear that the statutory damages under R.C. 5301.36(C) are not a penalty. So Fannie Mae insists that Ohio and federal law conflict with a "finding" by FHFA that the statutory damages at issue here are a penalty. But before issuing the consent order, Fannie Mae stipulated that FHFA did not make any findings, of either fact or law. So, Fannie Mae is essentially asking this Court to exercise jurisdiction over this matter to determine if Fannie Mae was lying when it made its stipulation, or if it's lying now. That is not an issue of public or great general interest. Nor do the propositions of law that Fannie Mae crafted to dress up this argument present issues of public or great general interest. Therefore, Radatz respectfully submits that this Court should not exercise jurisdiction over this matter.

Respectfully submitted,

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