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15 FEDERAL HOUSING FINANCE AGENCY and
16 EDWARD DeMARCO

17 **UNITED STATES DISTRICT COURT**
18 **NORTHERN DISTRICT OF CALIFORNIA**
19 **OAKLAND DIVISION**

20 PEOPLE OF THE STATE OF CALIFORNIA)
21 *ex rel.* EDMUND G. BROWN, JR.,)
22 ATTORNEY GENERAL,)
23)
24 Plaintiff,)

25 v.)

26 FEDERAL HOUSING FINANCE AGENCY,)
27 EDWARD DeMARCO, in his capacity as)
28 Acting Director of FEDERAL HOUSING)
LOAN MORTGAGE CORPORATION;)
CHARLES E. HALDEMAN, JR., in his)
capacity as Chief Executive Officer of)
FEDERAL HOME LOAN MORTGAGE)
CORPORATION; FEDERAL NATIONAL)
MORTGAGE ASSOCIATION; MICHAEL J.)
WILLIAMS, in his capacity as Chief)
Executive Officer of FEDERAL NATIONAL)
MORTGAGE ASSOCIATION,)

Defendants.)

Case No. 4:10-CV-03084-CW

**DEFENDANTS' NOTICE OF NEW
AUTHORITY**

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COUNTY OF SONOMA,)
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Plaintiff,)
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v.)
)
FEDERAL HOUSING FINANCE AGENCY;))
EDWARD DeMARCO, in his capacity as)
Acting Director of FEDERAL HOUSING)
FINANCE AGENCY; FEDERAL HOME)
LOAN MORTGAGE CORPORATION;)
CHARLES E. HALDEMAN, JR. in his)
capacity as Chief Executive Officer of)
FEDERAL HOME LOAN MORTGAGE)
CORPORATION; FEDERAL NATIONAL)
MORTGAGE ASSOCIATION; MICHAEL J.)
WILLIAMS, in his capacity as Chief)
Executive Officer of FEDERAL NATIONAL)
MORTGAGE ASSOCIATION,)
)
Defendants.)

Case No. 4:10-CV-03270-CW

SIERRA CLUB,)
)
Plaintiff,)
)
v.)
)
FEDERAL HOUSING FINANCE AGENCY;))
EDWARD DeMARCO, in his capacity as)
Acting Director of FEDERAL HOUSING)
FINANCE AGENCY;)
)
Defendants.)

Case No. 4:10-CV-03317-CW

1 CITY OF PALM DESERT, a municipal)
 corporation,)
 2)
 3 Plaintiff,)
)
 4 v.)
)
 5 FEDERAL HOUSING FINANCE AGENCY;)
 FEDERAL NATIONAL MORTGAGE)
 6 ASSOCIATION; and FEDERAL HOME)
 7 LOAN MORTGAGE CORPORATION,)
)
 8 Defendants.)
)
 9)
 10)
)

Case No. 4:10-CV-4482-CW

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 12 Defendant the Federal Housing Finance Agency (FHFA) respectfully notifies the Court of
 13 new authority that supports Defendants’ pending Motion to Dismiss. On February 28, 2011, FHFA,
 14 in its capacity as Conservator of Fannie Mae and Freddie Mac, issued guidance “reaffirm[ing] that
 15 PACE programs that provide for first-lien priority over mortgage loans present significant risks to
 16 certain assets and property of the Enterprises — mortgages and mortgage-related assets — and pose
 17 unusual and difficult risk management challenges for the Enterprises.” Letter from Pollard to
 18 Mayopoulos and Bostrom (Feb. 28, 2011) (Exh. A).¹

19 The Conservator’s Letter moots Plaintiffs’ claims. As Defendants have explained, 12
 20 U.S.C. § 4617(f) precludes the Court from restraining or affecting FHFA’s exercise of its powers or
 21 functions as Conservator. Defs.’ Mot. to Dismiss at 17-21 (N.D. Cal. Oct. 14, 2010). Plaintiffs’
 22 claims — including their notice-and-comment claim — are academic unless the Court can vacate
 23 both FHFA’s July Statement and the Enterprises’ August 31, 2010 Lender Letters. See Pls.’ Joint
 24 Resp. to St. of Int. at 7-8. But the Conservator’s Letter adopts and reaffirms the FHFA Statement
 25 and the Lender Letters as an exercise of FHFA’s powers and functions as Conservator, which the
 26 Court cannot restrain or affect — the Conservator directs the Enterprises to “continue to refrain

27 ¹ Counsel representing the United States was aware of the Letter’s issuance when it submitted the
 28 reply memorandum relating to its Statement of Interest.

1 from purchasing mortgage loans secured by properties with outstanding first-lien PACE
2 obligations,” to “continue to operate in accordance with the Lender Letters,” and to “undertake
3 other steps as may be necessary action to protect their safe and sound operations from these first-
4 lien PACE programs.” Exh. A.

5 Under Article III of the U.S. Constitution, courts have jurisdiction to decide only “actual,
6 ongoing cases or controversies,” and they lack authority “to decide moot questions or abstract
7 propositions.” *Wolfson v. Brammer*, 616 F.3d 1045, 1053 (9th Cir. 2010) (citations and internal
8 quotations omitted). Plaintiffs’ argument that § 4617(f) does not bar their claims cannot survive
9 because the February 28 Conservator’s Letter dispositively resolves any conceivable lingering
10 issue as to the central defense advanced by the Conservator throughout this litigation, Section
11 4617(f) bars Plaintiffs’ claims. Therefore, this action is moot, and the Court should grant the
12 pending Motion to Dismiss.

13
14 Dated: March 2, 2011

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26 By: _____
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