

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

FAIRHOLME FUNDS, INC., *et al.*,

Plaintiffs,

v.

FEDERAL HOUSING FINANCE  
AGENCY, *et al.*,

Defendants.

Civil No. 13-1053 (RCL)

In re Fannie Mae/Freddie Mac Senior  
Preferred Stock Purchase Agreement Class  
Action Litigations

Miscellaneous No. 13-1288 (RCL)

\_\_\_\_\_  
This document relates to:  
ALL CASES

**DEFENDANTS' ADDITIONAL PROPOSED JURY INSTRUCTION AND UPDATED  
PROPOSED VERDICT FORM REGARDING VIRGINIA PREJUDGMENT INTEREST**

Defendants respectfully submit an additional proposed jury instruction regarding prejudgment interest under Virginia law (Exhibit 1), and an updated proposed verdict form that adds two questions relating to Virginia prejudgment interest (Exhibit 2). Those two new questions are similar, but not identical, to Plaintiffs' comparable verdict-form questions, which inappropriately imply that the jury has in fact awarded damages to Freddie Mac shareholders.

Dated: October 30, 2022

Respectfully submitted,

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# Exhibit 1

**INSTRUCTION NO. 39  
PREJUDGMENT INTEREST<sup>1</sup>**

The claims of the Freddie Mac common and junior preferred shareholders are governed by Virginia law. Under Virginia law, if you decide to award damages to those Plaintiffs in any amount, you may but need not award prejudgment interest at the rate set by Virginia statute and fix a date from which interest is to begin.

In deciding whether or not to award prejudgment interest, Virginia law requires that you consider whether there was a bona fide legal dispute between the parties (that is, whether or not there was a legitimate or good faith controversy between the parties) and whether Plaintiffs sustained any loss in not receiving the amount of money that you may have awarded as damages at the time Plaintiffs were entitled to receive it.

If you award prejudgment interest, the date from which prejudgment interest should begin should be the date you determine Plaintiffs otherwise should have received the money absent a breach of the implied covenant of good faith and fair dealing.

Your decision whether or not to award prejudgment interest must be governed by this instruction and the other relevant instructions given to you.

This instruction applies only to whether or not you award prejudgment interest for Freddie Mac common and junior preferred shareholders under Virginia law. You are not being asked to determine any award of prejudgment interest for preferred shareholders of Fannie Mae because the Court will address this issue under Delaware law.

**GIVEN** \_\_\_\_\_

**REFUSED** \_\_\_\_\_

**GIVEN AS MODIFIED** \_\_\_\_\_

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<sup>1</sup> Adapted from *Laesseter v. Kerr*, 2006 WL 2630961 (Va. Cir. Ct.) (Jury Instruction). See also *Tech. & Supply Mgmt., LLC v. Johnson Controls Bldg. Automation Sys., LLC*, No. 116CV303AJTMSN, 2017 WL 3219281, at \*20 (E.D. Va. July 28, 2017); *Heritage Disposal & Storage, L.L.C. v. VSE Corp.*, No. 115CV1484AJTMSN, 2017 WL 361547, at \*14 (E.D. Va. Jan. 24, 2017).

# Exhibit 2

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**DEFENDANTS' PROPOSED VERDICT FORM**

You are to follow this Form and use it to report your findings after you have reached a unanimous verdict.

### **Definitions**

The following definitions apply to this verdict form.

- “Fannie Mae” is the Federal National Mortgage Association. Fannie Mae is in Conservatorship. FHFA is the Conservator for Fannie Mae.
- “Freddie Mac” is the Federal Home Loan Mortgage Corporation. Freddie Mac is in Conservatorship. FHFA is the Conservator for Freddie Mac.
- “FHFA” is the Federal Housing Finance Agency, the Conservator of Fannie Mae and Freddie Mac.
- “W.R. Berkley Plaintiffs” are Berkley Insurance Company, Berkley Regional Insurance Company, Acadia Insurance Company, Admiral Indemnity Company, Admiral Insurance Company, Carolina Casualty Insurance Company, Midwest Employers Casualty Insurance Company, Nautilus Insurance Company, Preferred Employers Insurance Company. The W.R. Berkley Plaintiffs are current holders of junior preferred stock in Fannie Mae and Freddie Mac.
- “Fannie Mae Preferred Class” is all current holders of junior preferred stock in Fannie Mae.
- “Freddie Mac Preferred Class” is all current holders of junior preferred stock in Freddie Mac.
- “Freddie Mac Common Class” is all current holders of common stock in Freddie Mac.
- “Plaintiffs” refers collectively to the W.R. Berkely Plaintiffs, the Fannie Mae Preferred Class, the Freddie Mac Preferred Class, and the Freddie Mac Common Class.
- “Third Amendment” is the Third Amendment to the Senior Preferred Stock Purchase Agreements (“PSPAs”) for Fannie Mae and Freddie Mac, entered into by FHFA, as Conservator for Fannie Mae and Freddie Mac, and the United States Department of Treasury on August 17, 2012.



**Question No. 1:**

Did the Plaintiffs prove by a preponderance of the evidence that FHFA, in its role as the Conservator of Fannie Mae and Freddie Mac, acted arbitrarily or unreasonably in entering into the Third Amendment, thereby violating the reasonable expectations of holders of Fannie Mae junior preferred stock, Freddie Mac junior preferred stock, and/or Freddie Mac common stock?

- Fannie Mae Junior Preferred Stock:            Yes \_\_\_\_            No \_\_\_\_
- Freddie Mac Junior Preferred Stock:            Yes \_\_\_\_            No \_\_\_\_
- Freddie Mac Common Stock:                    Yes \_\_\_\_            No \_\_\_\_

*If your answer to Question 1 is “Yes” for any group of shareholders, continue to Question 2, but only for the group(s) of Plaintiffs as to whom you answered “Yes”. If your answer to Question 1 is “No” for all three groups of shareholders, skip all other questions and sign the verdict form.*

**Question No. 2:**

Did the Plaintiffs prove by a preponderance of the evidence that members of the Fannie Mae Preferred Class, the Freddie Mac Preferred Class, and/or the Freddie Mac Common Class sustained harm as a result of the Third Amendment?

- Fannie Mae Junior Preferred Class:            Yes \_\_\_\_            No \_\_\_\_
- Freddie Mac Junior Preferred Class:            Yes \_\_\_\_            No \_\_\_\_
- Freddie Mac Common Class:                    Yes \_\_\_\_            No \_\_\_\_

*If your answer to any subpart of Question 2 is “Yes,” proceed to Question 3, but only for the group(s) of Plaintiffs as to whom you answered “Yes.” If your answer to all of the subparts of Question 2 is “No,” skip all other questions and sign the verdict form.*

**Question No. 3:**

Enter the amount of damages (monetary compensation), if any, that you find each group of Plaintiffs listed below has proven to a reasonable certainty. Please answer in dollars and cents or state "None." (You need not determine a separate amount of damages for the W.R. Berkley Plaintiffs.)

- Fannie Mae Preferred Class: \$ \_\_\_\_\_
- Freddie Mac Preferred Class: \$ \_\_\_\_\_
- Freddie Mac Common Class: \$ \_\_\_\_\_

*If your answer to Question 3 is "Yes" for the Freddie Mac Preferred Class and/or the Freddie Mac Common Class, continue to Question 4. If your answer to Question 3 is "No" for both the Freddie Mac Preferred Class and the Freddie Mac Common Class, skip all other questions and sign the verdict form.*

**Question No. 4:**

Do you award prejudgment interest on any damages awarded to holders of Freddie Mac junior preferred stock and Freddie Mac common stock?

- Yes \_\_\_\_\_ No \_\_\_\_\_

*If your answer to Question 4 is "Yes," continue to Question 5. If your answer to Question 4 is "No," skip Question 5 and sign the verdict form.*

**Question No. 5:**

On what date do you find that prejudgment interest should begin?

- \_\_\_\_\_

*Your deliberations are now concluded. Sign and date the verdict form and notify the courtroom deputy that you have reached a verdict.*

Date: \_\_\_\_\_

\_\_\_\_\_  
Jury Foreperson