

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

FEDERAL HOUSING FINANCE
AGENCY, AS CONSERVATOR FOR
THE FEDERAL NATIONAL
MORTGAGE ASSOCIATION and THE
FEDERAL HOME LOAN MORTGAGE
CORPORATION,

Plaintiff,

v.

NOMURA HOLDING AMERICA INC.;
NOMURA ASSET ACCEPTANCE
CORPORATION; NOMURA HOME
EQUITY LOAN, INC.; NOMURA
CREDIT & CAPITAL, INC.; NOMURA
SECURITIES INTERNATIONAL, INC.;
RBS SECURITIES INC. (f/k/a
GREENWICH CAPITAL
MARKETS, INC.); DAVID FINDLAY;
JOHN MCCARTHY; JOHN P. GRAHAM;
NATHAN GORIN; and DANTE
LAROCCA,

Defendants.

No. 11 Civ. 6201 (DLC)

ECF Case

NICALI

9/4/2015

~~PROPOSED~~ CONSENT JUDGMENT

WHEREAS, plaintiff Federal Housing Finance Agency (“FHFA” or “Plaintiff”), as Conservator for the Federal Home Loan Mortgage Corporation and the Federal National Mortgage Association, brought an action captioned as *Federal Housing Finance Agency v. Nomura Holding America Inc., et al.*, No. 11 Civ. 6201 (DLC) (the “Action”) in the United States District Court for the Southern District of New York (the “District Court”) against defendants Nomura Holding America Inc., Nomura Asset Acceptance Corporation, Nomura Home Equity Loan, Inc., Nomura Credit & Capital, Inc., Nomura Securities International, Inc., RBS Securities Inc., David Findlay, John McCarthy, John P. Graham, Nathan Gorin, and Dante LaRocca (collectively, “Defendants”);

WHEREAS, on May 15, 2015, the District Court entered judgment (the “May 15, 2015 Judgment”) in favor of Plaintiff in the amount of \$806,023,427, to be paid in exchange for the seven residential mortgage-backed securities certificates (the “Certificates”) at issue in this Action, with respect to causes of action under (i) Sections 12(a)(2) and 15 of the Securities Act of 1933, 15 U.S.C. §§ 77l(a)(2), 77o; (ii) Section 31-5606.05(a)(1)(B) and (c) of the District of Columbia Code (the “D.C. Blue Sky Claims”); and (iii) Section 13.1-522(A)(ii) of the Virginia Code (the “Virginia Blue Sky Claims,” and together with the D.C. Blue Sky Claims, the “Blue Sky Claims”);

WHEREAS, FHFA brought its Blue Sky Claims in this Action with respect to the following four Certificates: NAA 2005-AR6 3A1, NHELI 2006-FM2 1A1, NHELI 2007-1 IIIA, and NHELI 2007-2 1A1 (together, the “Covered Blue Sky Certificates”);

WHEREAS, the May 15, 2015 Judgment provides that “[a]s the prevailing party, FHFA is entitled to its costs and reasonable attorneys’ fees under D.C. Code § 31-5606.05(b)(1)(A) and Va. Code Ann. § 31.1-522(A)(ii),” and that “under Fed. R. Civ. P. 54(d), FHFA is entitled to

costs, and may move, including under 15 U.S.C. Chapter 2A, Subchapter I, for its attorneys' fees and related nontaxable expenses";

WHEREAS, on May 21, 2015, Plaintiff informed the District Court that it did not intend to seek attorneys' fees under the Securities Act of 1933, but did intend "to seek its costs and reasonable attorneys' fees under the Blue Sky statutes of Virginia [Va. Code Ann. § 31.1-522(A)(ii)] and the District of Columbia [D.C. Code § 31-5606.05(b)(1)(A)]";

WHEREAS, on June 10, 2015, Defendants filed notices of appeal to the United States Court of Appeals for the Second Circuit from the May 15, 2015 Judgment, from any and all adverse rulings incorporated in, antecedent to, or ancillary to the May 15, 2015 Judgment; and from any and all adverse interlocutory orders, judgments, decrees, decisions, rulings, and opinions;

WHEREAS, on August 26, 2015, Plaintiff and Defendants entered into an Agreement As To Attorneys' Fees ("Fees Agreement"), which is annexed hereto as Attachment A;

WHEREAS, pursuant to the terms of the Fees Agreement, Defendants have consented to the entry of this Consent Judgment under the terms and conditions set forth herein;

NOW, THEREFORE, IT IS HEREBY ORDERED AND ADJUDGED THAT:

1. This Consent Judgment is hereby entered in favor of Plaintiff and against Defendants, jointly and severally, in the "Payment" amount as defined below. There shall be no interest due or payable on the Payment.

2. The Consent Judgment is defined and limited as set forth herein and by the terms of the Fees Agreement, including but not limited to the following:

a. Neither Plaintiff nor the entities on whose behalf it brought suit as Conservator may execute on this Consent Judgment until such time (if ever) as: (i) the May 15,

2015 Judgment becomes "Final" (as that word is defined in paragraph 3 below); (ii) Paragraph 1 of the May 15, 2015 Judgment is affirmed on appeal without the possibility of further appeal or review with respect to FHFA's Blue Sky Claims on each Covered Blue Sky Certificate as to any Defendant; and (iii) Defendants or any of them are ordered to pay more than \$272,000,000 (two hundred seventy-two million dollars) with respect to FHFA's Blue Sky Claims in exchange for the four Covered Blue Sky Certificates. If any of these conditions is not met, Defendants have no obligation to make the Payment under this Consent Judgment, and Plaintiff (or the GSEs, if they are no longer in conservatorship) may seek its attorneys' fees and costs (including a Bill of Costs) through the District Court for determination on a schedule to be set by the District Court.

b. Defendants' obligation to make the Payment under this Consent Judgment shall be:

- i. equal to \$33,000,000 (thirty-three million dollars) if and only if Defendants or any of them are ordered to pay \$413,000,000 (four hundred thirteen million dollars) or more with respect to FHFA's Blue Sky Claims in exchange for the four Covered Blue Sky Certificates;
- ii. less than or equal to \$33,000,000 (thirty-three million dollars) as determined by the District Court in light of submissions made by the parties, if Defendants or any of them are ordered to pay an amount that is more than \$272,000,000 (two hundred seventy-two million dollars) and less than \$413,000,000 (four hundred thirteen million dollars) with respect to FHFA's Blue Sky Claims in exchange for the four Covered Blue Sky Certificates.

c. This Consent Judgment shall be vacated, and shall become null, void and of no effect if the May 15, 2015 Judgment is reversed or if, upon the May 15, 2015 Judgment becoming "Final" (as that word is defined in paragraph 3 below), (i) Paragraph 1 of the May 15, 2015 Judgment is not affirmed on appeal with respect to FHFA's Blue Sky Claims on each Covered Blue Sky Certificate as to any Defendant; or (ii) Defendants are ordered to pay less than or equal to \$272,000,000 (two hundred seventy-two million dollars) with respect to FHFA's Blue Sky Claims in exchange for the four Covered Blue Sky Certificates.

3. As used herein, "Final" means that all of the following proceedings have concluded and are no longer pending, or the time to initiate the following proceedings has expired with respect to the Blue Sky Claims: (i) Defendants' appeal to the United States Court of Appeals for the Second Circuit (including any petition for rehearing or rehearing en banc); (ii) any appeal to the United States Supreme Court or petition for a writ of certiorari; and (iii) any further proceedings in respect of a remand to a district court from the United States Court of Appeals for the Second Circuit or the United States Supreme Court.

So ordered.

James G. ...
Sept. 4, 2015

<p>THE FEDERAL HOUSING FINANCE AGENCY, AS CONSERVATOR FOR THE FEDERAL NATIONAL MORTGAGE ASSOCIATION AND THE FEDERAL HOME LOAN MORTGAGE CORPORATION</p> <p><i>Alfred Pollard</i></p> <p>BY: <u>ALFRED POLLARD</u> ITS: <u>GENERAL COUNSEL</u></p> <p>DATED: _____</p>	<p>THE FEDERAL HOME LOAN MORTGAGE CORPORATION</p> <p>BY: _____ ITS: _____</p> <p>DATED: _____</p>
<p>THE FEDERAL NATIONAL MORTGAGE ASSOCIATION</p> <p>BY: _____ ITS: _____</p> <p>DATED: _____</p>	<p>NOMURA HOLDING AMERICA INC.</p> <p>BY: _____ ITS: _____</p> <p>DATED: _____</p>
<p>NOMURA ASSET ACCEPTANCE CORPORATION</p> <p>BY: _____ ITS: _____</p> <p>DATED: _____</p>	<p>NOMURA HOME EQUITY LOAN, INC.</p> <p>BY: _____ ITS: _____</p> <p>DATED: _____</p>
<p>NOMURA CREDIT & CAPITAL, INC.</p> <p>BY: _____ ITS: _____</p> <p>DATED: _____</p>	<p>NOMURA SECURITIES INTERNATIONAL, INC.</p> <p>BY: _____ ITS: _____</p> <p>DATED: _____</p>

<p>THE FEDERAL HOUSING FINANCE AGENCY, AS CONSERVATOR FOR THE FEDERAL NATIONAL MORTGAGE ASSOCIATION AND THE FEDERAL HOME LOAN MORTGAGE CORPORATION</p> <p>_____</p> <p>BY: ITS:</p> <p>DATED: _____</p>	<p>THE FEDERAL HOME LOAN MORTGAGE CORPORATION</p> <p>_____</p> <p>BY: ITS:</p> <p>DATED: _____</p>
<p>THE FEDERAL NATIONAL MORTGAGE ASSOCIATION</p> <p><i>Jonathan Griffith</i></p> <p>BY: <i>Jonathan Griffith</i> ITS: <i>VP & Deputy General Counsel</i></p> <p>DATED: <i>8/26/15</i></p>	<p>NOMURA HOLDING AMERICA INC.</p> <p>_____</p> <p>BY: ITS:</p> <p>DATED: _____</p>
<p>NOMURA ASSET ACCEPTANCE CORPORATION</p> <p>_____</p> <p>BY: ITS:</p> <p>DATED: _____</p>	<p>NOMURA HOME EQUITY LOAN, INC.</p> <p>_____</p> <p>BY: ITS:</p> <p>DATED: _____</p>
<p>NOMURA CREDIT & CAPITAL, INC.</p> <p>_____</p> <p>BY: ITS:</p> <p>DATED: _____</p>	<p>NOMURA SECURITIES INTERNATIONAL, INC.</p> <p>_____</p> <p>BY: ITS:</p> <p>DATED: _____</p>

<p>THE FEDERAL HOUSING FINANCE AGENCY, AS CONSERVATOR FOR THE FEDERAL NATIONAL MORTGAGE ASSOCIATION AND THE FEDERAL HOME LOAN MORTGAGE CORPORATION</p> <p>_____</p> <p>BY: ITS:</p> <p>DATED: _____</p>	<p>THE FEDERAL HOME LOAN MORTGAGE CORPORATION</p> <p><i>Lance Wolf</i></p> <p>BY: <i>Lance Wolf</i> ITS: <i>V.P and Deputy General Counsel</i></p> <p>DATED: <i>August 26, 2015</i></p>
<p>THE FEDERAL NATIONAL MORTGAGE ASSOCIATION</p> <p>_____</p> <p>BY: ITS:</p> <p>DATED: _____</p>	<p>NOMURA HOLDING AMERICA INC.</p> <p>_____</p> <p>BY: ITS:</p> <p>DATED: _____</p>
<p>NOMURA ASSET ACCEPTANCE CORPORATION</p> <p>_____</p> <p>BY: ITS:</p> <p>DATED: _____</p>	<p>NOMURA HOME EQUITY LOAN, INC.</p> <p>_____</p> <p>BY: ITS:</p> <p>DATED: _____</p>
<p>NOMURA CREDIT & CAPITAL, INC.</p> <p>_____</p> <p>BY: ITS:</p> <p>DATED: _____</p>	<p>NOMURA SECURITIES INTERNATIONAL, INC.</p> <p>_____</p> <p>BY: ITS:</p> <p>DATED: _____</p>

<p>THE FEDERAL HOUSING FINANCE AGENCY, AS CONSERVATOR FOR THE FEDERAL NATIONAL MORTGAGE ASSOCIATION AND THE FEDERAL HOME LOAN MORTGAGE CORPORATION</p> <p>BY: _____ ITS: _____</p> <p>DATED: _____</p>	<p>THE FEDERAL HOME LOAN MORTGAGE CORPORATION</p> <p>BY: _____ ITS: _____</p> <p>DATED: _____</p>
<p>THE FEDERAL NATIONAL MORTGAGE ASSOCIATION</p> <p>BY: _____ ITS: _____</p> <p>DATED: _____</p>	<p>NOMURA HOLDING AMERICA INC.</p> <p><i>Nancy Prahofer</i> BY: <u>NANCY PRAHOFFER</u> ITS: <u>MANAGING DIRECTOR, LITIGATION</u></p> <p>DATED: <u>8/26/15</u></p>
<p>NOMURA ASSET ACCEPTANCE CORPORATION</p> <p><i>Juliet F. Buch</i> BY: <u>Juliet F. Buch</u> ITS: <u>Chief Executive Officer</u></p> <p>DATED: <u>8/31/15</u></p>	<p>NOMURA HOME EQUITY LOAN, INC.</p> <p><i>Juliet F. Buch</i> BY: <u>Juliet F. Buch</u> ITS: <u>Chief Executive Officer</u></p> <p>DATED: <u>8/31/15</u></p>
<p>NOMURA CREDIT & CAPITAL, INC.</p> <p><i>Juliet F. Buch</i> BY: <u>Juliet F. Buch</u> ITS: <u>Chief Executive Officer</u></p> <p>DATED: <u>8/31/15</u></p>	<p>NOMURA SECURITIES INTERNATIONAL, INC.</p> <p><i>Nancy Prahofer</i> BY: <u>NANCY PRAHOFFER</u> ITS: <u>MANAGING DIRECTOR - LITIGATION</u></p> <p>DATED: <u>8/31/15</u></p>

**RBS SECURITIES INC. (f/k/a
GREENWICH CAPITAL
MARKETS, INC.)**

Ky L
BY: Ky L
ITS: Managing Director
DATED: 8/28/15

SO ORDERED, at New York, New York
_____, 2015:

Hon. Denise L. Cote
United States District Judge

ENC

EXHIBIT A

EXECUTION COPY

AGREEMENT AS TO ATTORNEYS' FEES

This Agreement as to Attorneys' Fees (this "Fees Agreement") is entered into as of August 26, 2015, by and between (i) the Federal Housing Finance Agency ("FHFA" or "Plaintiff"), as Conservator for the Federal Home Loan Mortgage Corporation ("Freddie Mac") and the Federal National Mortgage Association ("Fannie Mae," and together with Freddie Mac, the "GSEs"), on the one hand, and (ii) Nomura Holding America Inc., Nomura Asset Acceptance Corporation, Nomura Home Equity Loan, Inc., Nomura Credit & Capital, Inc., Nomura Securities International, Inc., David Findlay, John McCarthy, John P. Graham, Nathan Gorin, N. Dante LaRocca and RBS Securities Inc. (collectively, "Defendants"), on the other.

WHEREAS, on May 15, 2015, the United States District Court for the Southern District of New York (the "District Court") in *Federal Housing Finance Agency v. Nomura Holding America Inc., et al.*, No. 11 Civ. 6201 (DLC) (the "*Nomura Action*") entered judgment (the "Judgment") in favor of Plaintiff in the amount of \$806,023,427, to be paid in exchange for the seven residential mortgage-backed securities certificates (the "Certificates") at issue in the *Nomura Action*, with respect to causes of action under (i) Sections 12(a)(2) and 15 of the Securities Act of 1933, 15 U.S.C. §§ 77l(a)(2), 77o; (ii) Section 31-5606.05(a)(1)(B) and (c) of the District of Columbia Code (the "D.C. Blue Sky Claims"); and (iii) Section 13.1-522(A)(ii) of the Virginia Code (the "Virginia Blue Sky Claims," and together with the D.C. Blue Sky Claims, the "Blue Sky Claims");

WHEREAS, FHFA brought Blue Sky Claims in the *Nomura Action* with respect to the following four Certificates: NAA 2005-AR6 3A1, NHELI 2006-FM2 1A1, NHELI 2007-1 IIIA, and NHELI 2007-2 1A1 (together, the "Covered Blue Sky Certificates");

WHEREAS, the Judgment provides that "[a]s the prevailing party, FHFA is entitled to its costs and reasonable attorneys' fees under D.C. Code § 31-5606.05(b)(1)(A) and Va. Code Ann. § 13.1-522(A)(ii)," and that "under Fed. R. Civ. P. 54(d), FHFA is entitled to costs, and may move, including under 15 U.S.C. Chapter 2A, Subchapter I, for its attorneys' fees and related nontaxable expenses";

WHEREAS, on May 21, 2015, Plaintiff informed the District Court that it did not intend to seek attorneys' fees under the Securities Act of 1933, but did intend "to seek its costs and reasonable attorneys' fees under the Blue Sky statutes of Virginia [Va. Code Ann. § 13.1-522(A)(ii)] and the District of Columbia [D.C. Code § 31-5606.05(b)(1)(A)]";

WHEREAS, the parties have, in the interest of mediating their dispute as to the amount of an award of attorneys' fees and costs in the *Nomura Action*, agreed that Defendants will be jointly and severally liable to FHFA for up to thirty-three million dollars (\$33,000,000.00) in fees and costs, as set forth below, related to litigation of Blue Sky Claims in the *Nomura Action*; and

WHEREAS, on June 10, 2015, Defendants filed notices of appeal to the United States Court of Appeals for the Second Circuit from the Judgment, from any and all

adverse rulings incorporated in, antecedent to, or ancillary to the Judgment; and from any and all adverse interlocutory orders, judgments, decrees, decisions, rulings, and opinions;

NOW, THEREFORE, for good and valid consideration, the receipt and sufficiency of which is hereby acknowledged, Plaintiff and Defendants herein agree to resolve any dispute as to the amount of attorneys' fees and other taxable and non-taxable costs and expenses incurred in the District Court up to and including the date hereof as follows:

1. Conditional Payment.

(a) Subject to the conditions set forth below, Defendants shall pay Freddie Mac and Fannie Mae, in accordance with FHFA's written instructions, the "Payment" (as defined below) in full settlement of any and all claims Plaintiff or the GSEs have that relate to attorneys' fees, costs taxable under Fed. R. Civ. P. 54(d)(1), non-taxable costs, disbursements or other expenses (including but not limited to the fees of experts, vendors, witnesses, or other third parties) incurred in connection with the District Court in the *Nomura* proceedings as of the date of the execution of this Fees Agreement and attributable to the *Nomura* Action.

(b) Defendants' obligation to make the Payment is entirely contingent upon:

(i) the Judgment becoming Final (as that word is defined below);

(ii) Paragraph 1 of the Judgment being affirmed on appeal with respect to FHFA's Blue Sky Claims on each Covered Blue Sky Certificate as to any Defendant; *and*

(iii) Defendants or any of them being ordered to pay an amount that is more than \$272,000,000 (two hundred seventy-two million dollars) with respect to FHFA's Blue Sky Claims in exchange for the four Covered Blue Sky Certificates.

If any of these conditions is not met, Defendants have no obligation to make the Payment under this Fees Agreement, and Plaintiff (or the GSEs, if they are no longer in conservatorship) may seek its attorneys' fees and costs (including a Bill of Costs) through the District Court for determination on a schedule to be set by the District Court.

(c) If Defendants have an obligation to make the Payment under this Fees Agreement, the Payment shall be defined as:

(i) equal to \$33,000,000 (thirty-three million dollars) if and only if Defendants or any of them are ordered to pay \$413,000,000 (four hundred thirteen million dollars) or more with respect to FHFA's Blue Sky Claims in exchange for the four Covered Blue Sky Certificates;

(ii) less than or equal to \$33,000,000 (thirty-three million dollars) as determined by the District Court in light of submissions made

by the parties, if Defendants or any of them are ordered to pay an amount that is more than \$272,000,000 (two hundred seventy-two million dollars) and less than \$413,000,000 (four hundred thirteen million dollars) with respect to FHFA's Blue Sky Claims in exchange for the four Covered Blue Sky Certificates.

(d) If Defendants have an obligation to make the Payment under this Fees Agreement, the Payment shall be due on the date on which the payments set forth in Paragraph 6 of the Judgment are due to be made in exchange for the Certificates. There shall be no interest due or payable on the Payment.

(e) As used in this Fees Agreement, "Final" means that all of the following proceedings have concluded and are no longer pending, or the time to initiate the following proceedings has expired with respect to the Blue Sky Claims:

(i) Defendants' appeal to the United States Court of Appeals for the Second Circuit (including any petition for rehearing or rehearing *en banc*); (ii) any appeal to the United States Supreme Court or petition for a writ of *certiorari*; and (iii) any further proceedings in respect of a remand to a district court from the United States Court of Appeals for the Second Circuit or the United States Supreme Court.

(f) Attorneys' fees and costs incurred in connection with Defendants' pending appeals are not covered by the Fees Agreement, and all parties to this Fees Agreement reserve all rights with respect thereto. In the event that the *Nomura* Action is remanded by an appellate court for further proceedings in the District Court, any future attorneys' fees and costs incurred in the District Court (if, and to the extent, recoverable by any party) shall not be deemed to be released by this Fees Agreement.

(g) Plaintiff agrees that it will not file a Bill of Costs under Fed. R. Civ. P. 54(d)(1) or otherwise seek an award of any costs (taxable or otherwise) from the District Court with respect to any such costs incurred in the District Court (except as set forth in the last sentences of subparagraphs 1(b) and 1(f)).

(h) Nothing in this Fees Agreement shall affect or reduce Defendants' obligations, if the Judgment is affirmed in full and becomes Final, to pay \$806,023,427, together with applicable post-judgment interest, in exchange for the Certificates, as set forth in the Judgment.

2. Consent Judgment for Attorneys' Fees.

The Parties consent to entry in the District Court of a judgment against Defendants, jointly and severally, in the form attached hereto as Exhibit A ("Attorneys' Fees Judgment"). For the avoidance of doubt, the Attorneys' Fees Judgment shall be vacated, and shall become null, void and of no effect, as set forth in subparagraph 1(b), if upon the Judgment becoming Final (as that word is defined above), (i) Paragraph 1 of the Judgment is not affirmed on appeal with respect to FHFA's Blue Sky Claims on each Covered Blue Sky Certificate as to any Defendant; or (ii) Defendants are ordered to pay less than or equal to \$272,000,000 (two hundred seventy-two million dollars) with respect to FHFA's Blue Sky Claims in exchange for the four Covered Blue Sky Certificates. The Attorneys' Fees Judgment shall be non-appealable.

3. Authority to Execute. The signatories below hereby affirm and represent that they are authorized on behalf of their respective clients as parties in the *Nomura* Action to enter into this Fees Agreement on behalf of those clients and that by doing so, their clients are bound to the terms and conditions of this Fees Agreement.

4. Entire Agreement. This Fees Agreement constitutes the entire agreement among the parties to this Fees Agreement and overrides and replaces all prior negotiations and terms proposed or discussed, whether in writing or orally, about the subject matter hereof. No modification of this Fees Agreement shall be valid unless it is in writing, identified as an amendment to this Fees Agreement, and signed by all parties hereto.

5. Connecticut Action. This Fees Agreement is without prejudice to FHFA's right to seek costs taxable under Fed. R. Civ. P. 54(d)(1), non-taxable costs, disbursements or other expenses (including but not limited to the fees of experts, vendors, witnesses, or other third parties) attorneys' fees and costs against RBSSI and/or its affiliates in *Federal Housing Finance Agency v. Royal Bank of Scotland Group plc, et al.*, 11 Civ. 1383 (D. Conn.) (the "Connecticut Action"), provided, however, that (i) FHFA may not seek such costs, disbursements or fees in the Connecticut Action for work primarily relating to the *Nomura* Action and not the Connecticut Action, and (ii) any offset, based upon the Payment, to costs, disbursements or fees recoverable by FHFA in the Connecticut Action arising from depositions of current or former employees of RBSSI (and/or its affiliates) shall be limited to 50% of those costs, disbursements or fees arising from the depositions of Stephen Bisailon, Frank Camacho, Brian Farrell, William Gallagher, Scott Gimpel, Frank Skibo, Adam Smith, and James Whittemore, which FHFA represents amounts to approximately \$875,000 (i.e., 50% of \$1,750,000).

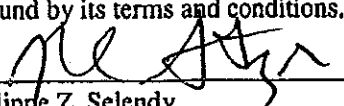
6. Choice of Law. This Fees Agreement is governed by, and shall be construed in accordance with, the laws of the State of New York without regard to choice of law or conflicts of law principles.

7. Enforcement. The Parties agree that the District Court shall have jurisdiction over this Fees Agreement and the Attorneys' Fees Judgment.

8. Confidentiality. The Parties' correspondence in mediation with respect to the costs and attorneys' fees governed by this Fees Agreement, including all Excel attachments thereto, shall remain confidential and may not be used in any other legal or other proceeding, other than solely with respect to enforcement of this Fees Agreement or the Attorneys' Fees Judgment.

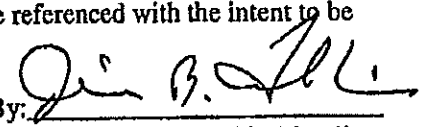
9. Counterparts. This Fees Agreement may be executed in multiple counterparts, which shall be deemed an original but all of which together shall constitute one and the same instrument. Signatures exchanged by facsimile or .pdf shall be valid and effective as original signatures.

IN WITNESS WHEREOF, the parties execute this Fees Agreement, by their counsel designated below, as of the date first above referenced with the intent to be bound by its terms and conditions.

By: 
Philippe Z. Selendy
(philippeselendy@quinnemanuel.com)
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Quinn Emanuel Urquhart & Sullivan, LLP
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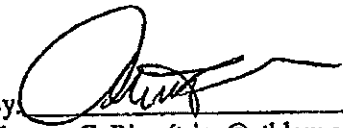
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John McCarthy, John P. Graham, Nathan
Gorin, and N. Dante LaRocca*

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