

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

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JINO KURIAKOSE, Individually and	)	
On Behalf of All Others Similarly Situated,	)	
	)	
Plaintiff,	)	08-CV-7281 (JFK)
	)	ECF Case
v.	)	
	)	
FEDERAL HOME LOAN MORTGAGE	)	<b><u>ELECTRONICALLY FILED</u></b>
COMPANY, RICHARD SYRON,	)	
PATRICIA L. COOK and ANTHONY S.	)	
PISZEL	)	
	)	
Defendants.	)	

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**MEMORANDUM OF LAW IN SUPPORT OF THE MOTION  
OF RICHARD H. MOORE, AS TREASURER OF THE STATE OF NORTH  
CAROLINA AND AS THE SOLE TRUSTEE OF THE NORTH CAROLINA  
RETIREMENT SYSTEMS, FOR APPOINTMENT AS LEAD PLAINTIFF AND  
APPROVAL OF ITS SELECTION OF COUNSEL**

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## INTRODUCTION

Pursuant to Section 21D of the Securities Exchange Act of 1934 (the “Exchange Act”), as amended by the Private Securities Litigation Reform Act (“PSLRA”), 15 U.S.C. § 78u-4, Richard H. Moore, as Treasurer of the State of North Carolina and as the sole trustee of the North Carolina Retirement Systems (“NCRS”), respectfully moves this Court for an order appointing NCRS as the Lead Plaintiff on behalf of all persons<sup>1</sup> who purchased securities of Federal Home Loan Mortgage Company (“Freddie Mac” or the “Company”) from November 21, 2007 through and including August 5, 2008 (the “Class Period”), and for approval and appointment of its selection of Motley Rice LLC (“Motley Rice”) as Lead Counsel.

For the reasons set forth below, NCRS is the most adequate plaintiff, and hence the presumptive lead plaintiff, in this proceeding. NCRS is a large state pension fund, which is accustomed to acting as a fiduciary. As NCRS’s duly executed certification shows, NCRS purchased 1,281,186 shares of Freddie Mac securities on the NYSE during the Class Period. See Declaration of William H. Narwold (“Narwold Decl.”) Ex. A, filed herewith. Attached as Exhibit C to the accompanying Narwold Declaration is NCRS’s loss chart, showing that NCRS had net expenditures of \$20,122,562 during the Class Period and a loss of \$18,150,013.<sup>2</sup> As a sophisticated institutional investor, NCRS is ideally suited to serve as the lead plaintiff in this action. NCRS should be appointed lead plaintiff and its proposed Lead Counsel should be approved.

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<sup>1</sup> The Class excludes Defendants, the Company’s officers and directors, affiliates, legal representatives, heirs, predecessors, successors and assigns, and any other entity in which any of the Defendants has a controlling interest or of which the Company is a parent or subsidiary.

<sup>2</sup> The loss under a “last-in-first-out” (LIFO) method of accounting is \$15,610,246.

## **FACTUAL BACKGROUND<sup>3</sup>**

Freddie Mac is a federally-chartered, shareholder owned corporation created by Congress in 1970 to help provide liquidity, stability, and affordability to the U.S. housing market. This putative class action involves allegations that Freddie Mac misled investors as to the soundness of its mortgage portfolio, its underwriting standards, and the adequacy of its capital. Freddie Mac took on massive exposure to subprime and other non-traditional risky loans, in particular “Alt-A” loans, which are given to borrowers with better than subprime credit scores but without full documentation. The Company also under-reserved for bad loans and subprime investments, leading to delayed asset write downs.

On November 20, 2007, after the Company announced a third quarter loss of \$2 billion because of its deteriorating mortgage portfolio, its shares dropped 29%. On June 30, 2008 the Associated Press reported that defaults on loans backed by Freddie Mac and Fannie Mae rose 48% compared to a year earlier. On this news, the Company’s share price dropped 8.12%. Finally, on August 6, 2008 the Company disclosed a second quarter loss of \$821 million, wrote down \$1 billion in subprime and other risky mortgages, and increased its reserves for losses in its mortgage portfolio by \$2.8 billion. The Company’s stock price fell 19% on this news.

## **PROCEDURAL BACKGROUND**

The PSLRA requires the counsel who files the first complaint to issue a notice to investors in a widely circulated national business-oriented publication within twenty days of the date the complaint is filed, advising class members of the pendency of the lawsuit and the nature of the allegations, their right to seek appointment as lead plaintiff within sixty days of the publication of the notice, and the purported class period. See 15 U.S.C. § 78u-4(a)(3)(A)(1).

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<sup>3</sup> This factual summary is based on the Complaint filed in Kuriakose v. Federal Home Loan Mortgage Co., No. 08-cv-7281 (JFK) (S.D.N.Y. filed July 25, 2008).

The first action against Freddie Mac was filed on August 15, 2008. On August 18, 2008 counsel in the first-filed action issued the required Notice on Globe Newswire.<sup>4</sup>

The PSLRA requires putative class members to move for appointment as lead plaintiff within 60 days of the date the Notice was issued. See 15 U.S.C. § 78u-4(a)(3)(A)(1). NCRS has satisfied this requirement by filing its motion within the sixty-day period. Accordingly, the procedural mandates of the PSLRA have been satisfied.

## **ARGUMENT**

### **POINT I**

#### **NCRS SHOULD BE APPOINTED LEAD PLAINTIFF**

##### **A. The Legal Requirements Under the PSLRA**

The PSLRA provides a rebuttable presumption that the most adequate plaintiff in any private action arising under this title is the person or group of persons that:

- (aa) has either filed the complaint or made a motion in response to a notice . . . ;
- (bb) in the determination of the court, has the largest financial interest in the relief sought by the class; and
- (cc) otherwise satisfies the requirements of Rule 23 of the Federal Rules of Civil Procedure.

15 U.S.C. § 78u-4(a)(3)(B)(iii)(I) (1997); see generally Bassin v. deCODE Genetics, Inc., 230 F.R.D. 313 (S.D.N.Y. 2005).

##### **B. NCRS Satisfies the Lead Plaintiff Requirements of the Exchange Act**

###### **1. NCRS Has Complied with the Exchange Act and Should Be Appointed Lead Plaintiff**

The 60-day time period in which class members may move to be appointed Lead Plaintiff under 15 U.S.C. § 78u-4(a)(3)(A)-(b) expires on Friday, October 17, 2008. Pursuant to the

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<sup>4</sup> Globe Newswire is a NASDAQ OMX Company. A copy of the Notice is attached as Exhibit B to the Narwold Declaration.

provisions of the PSLRA and within the requisite time frame after publication of the required notice, NCRS timely moves this Court to be appointed lead plaintiff on behalf of all members of the Class.

The North Carolina State Treasurer has signed and filed a sworn certification pursuant to the PSLRA. See Narwold Decl. Ex. A. In addition, NCRS has selected and retained competent counsel to represent it and the class. See Narwold Decl. Ex. D. Therefore, NCRS has satisfied the individual requirements of 15 U.S.C. § 78u-4(a)(3)(B) and is entitled to have its application for appointment as lead plaintiff and selection of lead counsel considered and, for the reasons set forth herein, approved by the Court.

**2. NCRS Is Precisely the Type of Lead Plaintiff Congress Envisioned When It Passed the PSLRA**

NCRS is a large public pension fund. The Congressional objective in enacting the lead plaintiff provisions was to encourage large, organized institutional investors to play a more prominent role in securities class actions. See H.R. Conf. Rep. No. 104-369, at 34 (1995), reprinted in 1995 U.S.C.C.A.N. 679, 733 (“The Conference Committee believes that increasing the role of institutional investors in class actions will ultimately benefit shareholders and assist courts by improving the quality of representation in securities class actions.”); see also Glauer v. EVCI Ctr. Colleges Holding Corp., 236 F.R.D. 184, 188 (S.D.N.Y. 2006) (“[T]he PSLRA was passed, at least in part, to increase the likelihood that institutional investors would serve as lead plaintiffs in actions such as this one.”) (quoting In re Veeco Instruments, Inc., 233 F.R.D. 330, 332-33 (S.D.N.Y. 2005)).

Congress reasoned that increasing the role of institutional investors, which typically have a large financial stake in the outcome of the litigation, would be beneficial because institutional investors with a large financial stake are more apt to effectively manage complex securities

litigation. NCRS, which is a large institutional investor, is precisely the type of lead plaintiff Congress envisioned when it passed the PSLRA. See H.R. Conf. Rep. No. 104-369, at 34 (1995), reprinted in 1995 U.S.C.C.A.N. 679, 733 (“Institutional investors and other class members with large amounts at stake will represent the interests of the plaintiff class more effectively than class members with small amounts at stake.”).

Courts have recognized that public pension funds, such as NCRS, are particularly favored as lead plaintiffs: “The Court also notes that the members of the aptly-named Pension Fund Group are public institutional investors, which comports with the PLSRA’s expressed preference for such lead plaintiffs.” In re Cardinal Health, Inc. Sec. Litig., 226 F.R.D. 298, 305 (S.D. Ohio 2005); see also Smith v. Suprema Specialties, Inc., 206 F. Supp. 2d 627, 639 (D.N.J. 2002) (appointing public pension fund over investment management company with larger losses and noting that the public pension fund “possesses the financial sophistication and expertise to ensure that the litigation will proceed in the best interests of the Class”).

NCRS is a sophisticated institutional investor that is familiar with the provisions governing the appointment of lead plaintiffs in PSLRA actions. NCRS is the 10th largest public pension fund in the country.<sup>5</sup> In February 2007 the credit-rating agency Standard & Poor’s named North Carolina’s pension fund the second strongest in the nation for the second year in a row. While many pension plans across the country are facing funding shortages, NCRS has won acclaim across the nation for its strong investment returns, sound management, and high funding level.

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<sup>5</sup> NCRS include the Teachers’ and State Employees’ Retirement System, the Consolidated Judicial Retirement System, the Firemen’s and Rescue Workers’ Pension Fund, the Local Governmental Employees’ Retirement System, the Legislative Retirement System, and the North Carolina National Guard Pension Fund. The Motion is made by Richard H. Moore, as Treasurer of the State of North Carolina and as the sole trustee of the North Carolina Retirement Systems, without limitation.

### **3. NCRS Has the Requisite Financial Interest in the Relief Sought by the Class**

As shown in its Certification, NCRS purchased 1,281,186 shares of Freddie Mac securities on the NYSE during the putative Class Period and had net expenditures of \$20,122,562 and losses of over \$18.15 million. Narwold Decl. Ex. A, Schedule A; Ex. C. Upon information and belief, NCRS thus has the largest financial interest in the relief sought by the class of any class member who has appeared and is presumptively the most adequate plaintiff to serve as lead plaintiff.

### **4. NCRS Otherwise Satisfies the Requirements of Rule 23**

The PSLRA requires that lead plaintiffs, in addition to having the largest financial interest, must “otherwise satisf[y] the requirements of Rule 23 of the Federal Rules of Civil Procedure.” 15 U.S.C. § 78u-4(a)(3)(B)(iii)(1)(cc).

Rule 23(a) requires that: (1) the class be so numerous that joinder of all members is impracticable; (2) there be questions of law or fact common to the class; (3) such claims be typical of those of the class; and (4) the representatives fairly and adequately protect the interests of the class. Fed. R. Civ. P. 23(a). In deciding a lead plaintiff motion, the Court should limit its inquiry to the typicality and adequacy prongs of Rule 23(a), and defer examination of the remaining requirements until the lead plaintiff moves for class certification. See Glauser, 236 F.R.D. at 188 (“Typicality and adequacy of representation, however, ‘are the only provisions relevant to a determination of lead plaintiff under the PSLRA.’”) (quoting Oxford Health Plans, Inc. Sec. Litig., 182 F.R.D. 42, 49 (S.D.N.Y. 1998)). Also, at the lead plaintiff stage, the moving party need only make a preliminary showing that it satisfies the typicality and adequacy requirements of Rule 23. Id.

The typicality requirement is satisfied when “the claims or defenses of the representative parties are typical of the claims or defenses of the class.” Fed. R. Civ. P. 23(a)(3). Typicality



exists if the “claims of the Lead Plaintiff arise from the same event or course of conduct that gives rise to the claims of the other class members, where these claims are based on the same legal theory, and where the class members and Lead Plaintiff were injured by the same conduct.” Glauser, 236 F.R.D. at 188-89 (citing Dietrich v. Bauer, 192 F.R.D. 119, 124 (S.D.N.Y. 2000)); see also In re Drexel Burnham Lambert Group, Inc., 960 F.2d 285, 291 (2d Cir. 1992). Also, a difference in the factual situations of class members alone does not defeat typicality under Rule 23(a)(3). See Priest v. Zayre Corp., 118 F.R.D. 552, 555 (D. Mass. 1988). Thus, courts have repeatedly held that typicality is satisfied in securities class actions when the class representative, like all other class members, purchased the subject stock during the relevant time period at prices that they allege were artificially inflated by false and misleading statements by defendants and allegedly suffered damages. See, e.g., Glauser, 236 F.R.D. at 189; In re Sprint Corp. Sec. Litig., 164 F. Supp. 2d 1240, 1243-44 (D. Kan. 2001); Chisholm v. Transouth Fin. Corp., 184 F.R.D. 556, 563 (E.D. Va. 1999).

NCRS’s claims are typical of those of the putative class. NCRS purchased Freddie Mac securities during the Class Period at prices artificially inflated and distorted by Defendants’ misrepresentations and omissions. These shared claims, which are based on the same legal theory and arise from the same events and course of conduct as the class claims, satisfy the typicality requirement of Rule 23(a)(3).

The adequacy of representation requirement of Rule 23(a)(4) is satisfied when it is established that a representative party “will fairly and adequately protect the interests of the class.” Fed. R. Civ. P. 23(a)(4). This requirement is met when the proposed Lead Plaintiff “does not have interests that are antagonistic to the class that he seeks to represent and has retained

counsel that is capable and qualified to vigorously represent the interests of the class that he seeks to represent.” Glauser, 236 F.R.D. at 189.

NCRS is an adequate representative of the class. The interests of NCRS are clearly aligned with the interests of the members of the class because it, like other class members, paid artificially inflated prices due to Defendants’ materially false and misleading statements. There is no antagonism between NCRS’s interests and those of the putative class. Finally, NCRS has taken significant steps that demonstrate that it will protect the interests of the class: (1) NCRS has executed a sworn certification detailing its Class Period transactions and expressing its willingness to serve as lead plaintiff; (2) NCRS has timely moved this Court for appointment as lead plaintiff; and (3) NCRS has retained competent and experienced counsel to prosecute these claims. As shown below, NCRS’s proposed counsel is highly qualified, experienced, and able to conduct this complex litigation in a professional manner. Thus, NCRS prima facie satisfies the typicality and adequacy requirements of Rule 23 for the purposes of this Motion.

## **POINT II**

### **THE COURT SHOULD APPROVE NCRS’S CHOICE OF COUNSEL**

The PSLRA provides that the lead plaintiff shall, subject to court approval, select and retain lead counsel. 15 U.S.C. § 78u-4(a)(3)(B)(v); Glauser, 236 F.R.D. at 190. A court should not disturb the lead plaintiff’s choice of counsel unless necessary to “protect the interests of the class.” 15 U.S.C. § 78u-4(a)(3)(B)(iii)(II)(aa). NCRS has selected the law firm of Motley Rice LLC as proposed Lead Counsel. Motley Rice LLC members have substantial experience in the prosecution of shareholder and securities class actions.<sup>6</sup> See Motley Rice LLC 2008 Shareholder

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<sup>6</sup> As the district court noted when appointing Motley Rice Co-Lead Counsel in Marsden v. Select Medical Corp., No. 04-4020 (E.D. Pa. Order entered Oct. 5, 2006), “Motley Rice LLC possess[es] the requisite knowledge and skill in securities litigation to ably prosecute this matter on behalf of the class.”

and Securities Fraud Resume, Narwold Decl. Ex. D. Therefore, the Court should approve NCRS's selection of counsel.

### CONCLUSION

For all of the above reasons, NCRS respectfully requests that the Court: (1) appoint NCRS as lead plaintiff and (2) approve its selection of counsel.

Respectfully submitted this 17th day of October, 2008,

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