



U.S. Department of Justice

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July 17, 2017

VIA ELECTRONIC FILING

The Hon. Patrick J. Schiltz
United States District Court
14E U.S. Courthouse
300 South Fourth Street
Minneapolis, MN 55415

Re: *Atif Bhatti et al. v. The Federal Housing Finance Agency et al.*
Civil No.: 16-cv-2185 (PJS-HB)

Dear Judge Schiltz:

This afternoon, counsel for all parties participated in a conference call with Your Honor's Courtroom Deputy to discuss a proposed schedule and hearing date for the parties' forthcoming dispositive motions. Following the call, the parties were informed that the Court would prefer that the defendants file a joint motion to dismiss with combined briefing and instructed the defendants to file a letter on CM/ECF if they "believe joint motions and briefing are not feasible, with an explanation as to why not."

After conferring, the defendants believe that it would not be feasible to file joint briefs in this case. The Department of the Treasury and the Federal Housing Finance Agency ("FHFA") are distinct entities with their own institutional interests and litigating authority. Unlike many federal agencies, FHFA has independent litigating authority, and is thus represented by outside counsel rather than the Department of Justice in this matter. Plaintiffs are not the first shareholders in the Federal National Mortgage Association ("Fannie Mae") and the Federal Home Loan Mortgage Corporation ("Freddie Mac") to sue Treasury and the FHFA as co-defendants based on the events described in the Complaint. Treasury and FHFA have consistently pursued their own litigation strategies and filed separate briefs in these cases. *See, e.g., Perry Capital, LLC v. Mnuchin*, 848 F.3d 1072 (D.C. Cir. 2017) (affirming in pertinent part *Perry Capital v. Lew*, 70 F. Supp. 3d 208 (D.D.C. 2014)); *Saxton v. FHFA*, No. 15-cv-47 (LRR), 2017 WL 1148279 (N.D. Iowa Mar. 27, 2017), *appeal docketed* No. 17-1880 (7th Cir. 2017); *Robinson v. FHFA*, 2016

WL 4726555 (E.D. Ky. Sept. 9, 2016), *appeal docketed* No. 16-6680 (6th Cir. 2016); *Cont'l W. Ins. Co. v. FHFA*, 83 F. Supp. 3d 828, 840 n.6 (S.D. Iowa 2015). In another previous case, *Roberts v. FHFA*, No. 16-cv-2107 (N.D. Ill. Mar. 20, 2017), *appeal docketed* No. 17-1880 (7th Cir. 2017), Treasury and FHFA filed a joint brief with respect to arguments common to their respective positions, but filed separate briefs on issues specific to each agency.

In this case, Treasury and FHFA do not plan to present identical legal arguments. Rather, certain legal defenses will be distinct to each defendant. The defendants are mindful of the word limitations set forth in the Local Rules, as well as the value of economy in brief writing, and will coordinate with each other to respond to plaintiffs' claims as efficiently as possible and to avoid duplicative arguments. Once plaintiffs have filed their amended complaint, as they have represented that they intend to do, and defendants have had a better chance to assess their arguments in response, defendants would be amenable to negotiating a reduced word count limitation from those set forth in the Local Rules.

Defendants will work to file briefs that are efficient and concise. But in order to preserve the distinct institutional interests of the agencies involved, as well as their independent litigating authority, defendants respectfully request that they be permitted to file separate briefs in this matter.

Respectfully submitted,

/s/ Asim Varma

Asim Varma (pro hac vice to be filed)
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By: /s/ R. Charlie Merritt
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cc: Scott Knudson