

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

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|--------------------------------|---|-----------------|
| FAIRHOLME FUNDS, INC., et al., | ) |                 |
|                                | ) |                 |
| Plaintiffs,                    | ) | No. 13-465C     |
|                                | ) | (Judge Sweeney) |
| v.                             | ) |                 |
|                                | ) |                 |
| THE UNITED STATES,             | ) |                 |
|                                | ) |                 |
| Defendant.                     | ) |                 |

DEFENDANT’S MOTION FOR ENLARGEMENTS OF TIME WITHIN WHICH TO FILE COORDINATED BRIEFS IN RESPONSE TO PLAINTIFFS’ VARIOUS MOTIONS TO REMOVE THE “PROTECTED INFORMATION” DESIGNATION FROM CERTAIN DOCUMENTS, AND THE NEW YORK TIMES COMPANY’S MOTION TO INTERVENE

Pursuant to Rules 6(b) and 6.1 of the Rules of the United States Court of Federal Claims (RCFC), defendant, the United States, respectfully requests enlargements of time of varying lengths such as will permit the Government to file, on August 17, 2015: (1) a consolidated brief in response to the various motions<sup>1</sup> to remove the “Protected Information” designation from discovery materials filed by plaintiffs, Fairholme Funds, Inc., et al. (Fairholme); and (2) a coordinated response to the motion to intervene (for the purpose of seeking removal of “Protected Information” designations) filed by The New York Times Company (NYT) on June 30, 2015 (ECF No. 177). The Government’s responses to Fairholme’s motions are currently due

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<sup>1</sup> Plaintiffs’ Sealed Motion to Remove the “Protected Information” Designations from the Depositions of Edward DeMarco and Mario Ugoletti, June 12, 2015, ECF No. 162; Plaintiffs’ Sealed Motion to Remove the “Protected Information” Designation from Certain Grant Thornton Documents, June 18, 2015, ECF No. 165; Plaintiffs’ Sealed Motion to Remove the “Protected Information” Designation from Certain Treasury and FHFA Documents, June 12, 2015, ECF No. 166.

on July 13, 2015.<sup>2</sup> The Government's response to NYT's motion is currently due on July 17, 2015. Fairholme and NYT both oppose the enlargements of time requested in this motion.

Good cause exists to grant the requested enlargements of time.<sup>3</sup> As an initial matter, setting the deadlines for the responses for the same date will allow us to respond to them in a coordinated and efficient manner (and through a single consolidated brief for the several motions filed by Fairholme). During the period since these motions were filed, the efforts of Government attorneys have largely been directed to the burdens of complying with the Court's discovery orders, including producing documents and privilege logs, and preparing for and participating in depositions noticed by Fairholme – including four depositions in four different cities between July 8, 2015 and July 15, 2015. Moreover, we anticipate that there will be additional depositions before the end of the discovery period – recently extended to September 4, 2015 – as well as significant motions practice relating to the Government's recently-produced final privilege logs. Given that these activities have limited our ability to devote time to preparing the Government's responses to the motions, the additional time requested is needed so that the Government will have adequate time to prepare meaningful responses to these motions.<sup>4</sup> The additional time requested will also provide Government counsel and the appropriate agency personnel with the

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<sup>2</sup> The Court had previously granted a 14-day enlargement of time (from June 29, 2015 to July 13, 2015) for the Government's response to Fairholme's motion regarding the depositions of Edward DeMarco and Mario Ugoletti, and a 7-day enlargement of time (from July 6, 2015 to July 13, 2015) for the Government's response to Fairholme's motion regarding Grant Thornton documents.

<sup>3</sup> The Government apologizes for seeking this enlargement of time on the due date for most of these matters. We had intended to seek guidance from the Court as to the timing and form of the responses to the above-referenced motions at a status conference originally scheduled for July 7, 2015. However, that status conference has been rescheduled to August 13, 2015, well after the Government's responses are due.

<sup>4</sup> In this regard, we also note that Gregg M. Schwind, one of the Government's primary attorneys in this case, left the Department of Justice on July 10, 2015.

necessary time to coordinate the contents of our responses and to obtain internal review of our responses prior to filing them with the Court.

Finally, the additional time requested will not prejudice Fairholme. Fairholme has access to all of the documents referenced in their motions and can fully utilize those documents in this litigation. Moreover, the Court has already provided Fairholme *limited* relief when it permitted Fairholme file the documents at issue, albeit under seal, in *Fairholme Funds, Inc. v. The Federal Housing Finance Agency*, No. 14-5254 (D.C. Cir.). Order, July 9, 2015, ECF No. 194. In light of the fact that Fairholme is free to use the protected documents in this litigation, and in the related litigation pending in the Court of Appeals for the District of Columbia Circuit, the modest enlargement of time sought – which would delay only the determination of whether these discovery materials should also be made *public* – is not unreasonable.

For these reasons, we respectfully request that the Court permit the Government to file its coordinated responses to Fairholme’s de-designation motions and The New York Times Company’s related motion to intervene on August 17, 2015.

Respectfully submitted,

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