IN THE UNITED STATES COURT OF FEDERAL CLAIMS

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

DEFENDANT'S REPLY TO PLAINTIFFS' OPPOSITION TO DEFENDANT'S AND GRANT THORNTON'S MOTIONS FOR AN ENLARGEMENT OF TIME TO FILE RESPONSES TO PLAINTIFFS' MOTIONS TO REMOVE THE PROTECTED INFORMATION DESIGNATION FROM MATERIALS PRODUCED IN DISCOVERY

Defendant, the United States, respectfully submits this reply to address the arguments related to prejudice that plaintiffs, Fairholme Funds, Inc., et al., assert in their opposition (ECF No. 199; Pls. Opp.) to our motion for enlargements of time in 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 (ECF No. 198).

In our moving papers, we established that plaintiffs would not be prejudiced by the modest enlargements of time sought because they currently have access to all of the discovery materials at issue and can use those documents in this litigation and, pursuant to the Court's order that provided them limited relief, in the related litigation in the District of Columbia Circuit. In response, plaintiffs argue that "[e]very day that the producing parties are allowed to maintain a Protected Information designation for materials that do not qualify for such a designation . . . is a day in which Plaintiffs are denied their right to review information that is relevant to their claims and to thereby assist in the prosecution of their claim for the taking of their property without just compensation." Pls. Opp. at 3-4. As a preliminary matter, it has not

been established that any of the materials designated by the Government as "Protected Information" do not qualify for that designation. More importantly, the purpose of the limited discovery currently taking place in this case is to establish whether this Court possesses jurisdiction to entertain plaintiffs' claims – it is not, as plaintiffs suggest, general merits discovery in the "prosecution of their claim" for a Fifth Amendment taking. The issue of whether this Court possesses jurisdiction to decide plaintiffs' takings claims is a legal question that counsel for plaintiffs are perfectly capable of addressing without the involvement of the plaintiffs themselves. Moreover, even to the extent that the "jurisdictional discovery" necessarily implicates factual matters, the topics of inquiry authorized by the Court solely involve the actions of the Government and of the conservator of Fannie Mae and Freddie Mac. Because the factual record that is currently being developed in jurisdictional discovery has no connection to the actions or expectations of the plaintiff shareholders themselves, counsel for plaintiffs cannot establish that they are somehow hamstrung by their clients' inability to view certain documents. In fact, counsel for plaintiffs have not even attempted to explain how their shareholder clients could help them at this stage of the case.

Finally, plaintiff shareholders have already demonstrated their eagerness to share documents produced by the Government in the public domain for their own economic benefit, as evidenced by their use of the Government's provisional privilege logs. *See* Defendant's Response to Plaintiffs' Motion to Remove the "Protected Information" Designation from Defendant's Provisional Privilege Logs at 9, May 18, 2015, ECF No. 154. Plaintiffs' apparent desire to use other discovery materials in the same manner that they used the provisional privilege logs is certainly *not* a compelling reason for the Court to deny the modest enlargements

of time sought by the Government – especially where their counsel now have full use of these materials for this litigation and the litigation pending in the District of Columbia Circuit.

For these reasons as well as those presented in our moving papers, we respectfully request that the Court grant the Government's motion for enlargements of time, to and including August 17, 2015, in which to respond to plaintiffs' de-designation motions.

Respectfully submitted,

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