

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

FAIRHOLME FUNDS, INC., *et al.*,

Plaintiffs,

vs.

THE UNITED STATES,

Defendant.

No. 13-465C
(Judge Sweeney)

**NOTICE OF FILING OF APPLICATIONS FOR ACCESS TO PROTECTED
INFORMATION OF CERTAIN ATTORNEYS REPRESENTING THE PLAINTIFF IN
ROBINSON V. FHFA, NO. 7:15-cv-109 (E.D. KENTUCKY)**

Pursuant to Paragraph 4 of the Second Amended Protective Order (Nov. 9, 2015), Doc. 256, Arnetia Joyce Robinson respectfully submits the attached applications of her attorneys for access to Protected Information. Counsel for the government has informed counsel for Ms. Robinson that the government opposes the requested relief. Plaintiffs Fairholme Funds, Inc., et al. (“Fairholme”) consent to Ms. Robinson’s attorneys receiving access to Protected Information.

1. Ms. Robinson owns shares of Fannie Mae and Freddie Mac common stock, and she is the plaintiff in a suit challenging the Net Worth Sweep in the Eastern District of Kentucky (the “Kentucky Litigation”). Ms. Robinson’s suit contends that the Net Worth Sweep is unlawful under the Administrative Procedure Act (“APA”). *See* Pl.’s Compl. for Declaratory & Injunctive Relief, *Robinson v. FHFA*, No. 7:15-cv-109 (E.D. Ky. Oct. 23, 2015), ECF No. 1. Defendants FHFA and Treasury have informed Ms. Robinson that they intend to file motions to dismiss her complaint, and Fairholme has informed Ms. Robinson that it intends to file a motion for leave to submit an amicus brief in Ms. Robinson’s case outlining the most significant materials produced in discovery in this action in response to Defendants’ motions to dismiss.

2. This Court previously granted access to Protected Information to counsel for the plaintiffs in *Saxton v. FHFA*, No. 15-47 (N.D. Iowa), another APA suit challenging the Net Worth Sweep. *See Order Granting Certain Saxton Counsel Access to Protected Information* (Nov. 18, 2015), Doc. 265. When the Court issued that order, Treasury and FHFA had pending motions to dismiss the *Saxton* complaint and Fairholme had a pending motion before the *Saxton* court seeking leave to file an amicus brief discussing materials produced in discovery in this case. Thus, based on the representations made to Ms. Robinson by counsel for Treasury, FHFA, and Fairholme, Ms. Robinson's case will soon be in the very same procedural posture that the *Saxton* case was in when this Court granted the *Saxton* plaintiffs' request for access to Protected Information.

3. Although counsel for Ms. Robinson have not reviewed any of the materials produced in this case, Fairholme has said in public filings in other courts that these materials show that the Government's public representations about the Net Worth Sweep are "misleading—and in key respects false." Fairholme's Public Reply in Supp. of Its Mot. for Judicial Notice & Supplementation of the Record at 1, *Fairholme Funds, Inc., et al. v. FHFA*, No. 14-5254 (D.C. Cir. Sept. 22, 2015), ECF No. 1574387. It has also stated that materials produced in this case are "directly relevant to issues" in other APA suits challenging the Net Worth Sweep and that they "show that Defendants' litigation-driven rationales for the Net Worth Sweep are highly misleading." Fairholme's Br. in Supp. of Its Opposed Mot. for Leave to File Sealed Amicus Br. & App. in Supp. of Pls.' Opp'n to Mot. to Dismiss at 1–2, *Saxton v. FHFA*, No. 15-47 (N.D. Iowa Oct. 15, 2015), ECF No. 29-1.

4. The *Saxton* plaintiffs sought to amend their APA complaint after being given access to the materials produced in this case, *see Pls' Mot. for Leave to Amend the Compl., Saxton v.*

FHFA, No. 15-47 (N.D. Iowa Dec. 3, 2015), ECF No. 51, and Ms. Robinson intends to do the same if her attorneys are accorded similar access. Like the *Saxton* plaintiffs, Ms. Robinson drafted her original complaint using only publicly available information about the Net Worth Sweep, most of which was selected by FHFA and Treasury for public disclosure. It is apparent from Fairholme's public filings and the *Saxton* plaintiffs' decision to seek leave to amend their complaint that the available materials on which Ms. Robinson relied when she drafted her complaint are, at a minimum, incomplete. Ms. Robinson's attorneys therefore need access to Protected Information so that they can amend the complaint to account for facts about the Net Worth Sweep that the government has purposefully concealed from the public to date.

5. The Court should not wait to grant counsel for Ms. Robinson access to Protected Information until the defendants in her case file their motions to dismiss and Fairholme files its motion for leave to submit an amicus brief. Such delay would serve no purpose while needlessly increasing the costs for the litigants in Ms. Robinson's case. The time has not yet elapsed during which Ms. Robinson may amend her complaint as a matter of right. *See* FED. R. CIV. P. 15(a)(1). The most efficient course is for Ms. Robinson's attorneys to be given immediate access to Protected Information so that Ms. Robinson can amend her complaint. If Treasury and FHFA still deem it appropriate, they can then move to dismiss an amended complaint that fully reflects the facts revealed by discovery materials produced in this case. In short, there is no good reason to insist that Treasury and FHFA file motions to dismiss and Fairholme file a motion for leave to submit an amicus brief, all on the basis of a complaint that Ms. Robinson intends to amend, before granting Ms. Robinson's attorneys access to the materials they need to amend her complaint.

6. Counsel for Ms. Robinson in the Kentucky Litigation, including Robert B. Craig of the law firm Taft Stettinius & Hollister LLP, are familiar with the terms of this Court's Second Amended Protective Order, agree to be bound by its terms, and will treat any protected information they are allowed to access with the utmost care. They take their responsibility as officers of the Court seriously and will ensure that any Protected Information disclosed to them will be protected from public disclosure.

Accordingly, the Court should authorize attorneys for Ms. Robinson identified in the attached applications to access Protected Information produced in this case.

Dated: December 11, 2015

Respectfully submitted,

/s/ Jennifer B. Orr
Jennifer B. Orr
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Counsel for Arnetia Joyce Robinson

CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of December 2015, I caused a true and correct copy of the foregoing to be filed electronically using the Court's CM/ECF system, causing a true and correct copy to be served on all counsel of record.

/s/ Jennifer B. Orr
Jennifer B. Orr

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ATTACHMENT A

In the United States Court of Federal Claims

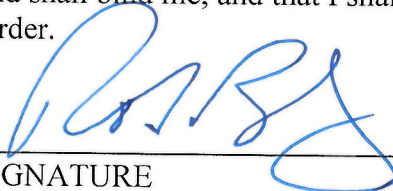
No. 13-456C

FAIRHOLME FUNDS, INC., et al. *
*
Plaintiffs, *
*
v. *
*
THE UNITED STATES, *
*
Defendant. *

DECLARATION OF ROBERT B. CRAIG

I hereby certify that I have carefully reviewed and am fully familiar with the provisions of the Protective Order dated November 9, 2015, entered and filed of record in the above-captioned litigation ("Protective Order").

I certify that I am eligible to have access to Confidential Material, pursuant to paragraphs 4 and 7 of the Protective Order. As a condition precedent to my examination of any Protected Information pursuant to the Protective Order, or any information contained in said material, I hereby agree that the Protective Order and any amendments thereto shall be deemed directed to and shall bind me, and that I shall observe and comply with all provisions of the Protective Order.



SIGNATURE

Robert B. Craig
NAME (PRINTED)

1717 Dixie Highway, Suite 910, Covington, Kentucky 41011
BUSINESS ADDRESS

Taft Stettinius & Hollister LLP
CURRENT EMPLOYER

Attorney
CURRENT OCCUPATION OR JOB DESCRIPTION

ATTACHMENT A

In the United States Court of Federal Claims


No. 13-456C

FAIRHOLME FUNDS, INC., et al. *
 *
Plaintiffs, *
 *
 v. *
 *
THE UNITED STATES, *
 *
Defendant. *

DECLARATION OF JONATHAN D. TEBBS

I hereby certify that I have carefully reviewed and am fully familiar with the provisions of the Protective Order dated November 9, 2015, entered and filed of record in the above-captioned litigation ("Protective Order").

I certify that I am eligible to have access to Confidential Material, pursuant to paragraphs 4 and 7 of the Protective Order. As a condition precedent to my examination of any Protected Information pursuant to the Protective Order, or any information contained in said material, I hereby agree that the Protective Order and any amendments thereto shall be deemed directed to and shall bind me, and that I shall observe and comply with all provisions of the Protective Order.



 SIGNATURE

Jonathan D. Tebbs

 NAME (PRINTED)

425 Walnut Street, Suite 1800, Cincinnati, Ohio 45202

 BUSINESS ADDRESS

Taft Stettinius & Hollister LLP

 CURRENT EMPLOYER

Attorney

 CURRENT OCCUPATION OR JOB DESCRIPTION